CRIMINAL LAW (MENTALLY IMPAIRED ACCUSED) ACT — "MENTAL IMPAIRMENT" — DEFINITION

97. Mr J.R. QUIGLEY to the Minister for Police:

I refer to section 8 of the Criminal Law (Mentally Impaired Accused) Act 1966, which defines mental impairment as "intellectual disability, mental illness, brain damage or senility".

(1) Why will the minister not let the courts take this into account when sentencing an offender under her new home burglary legislation?

(2) If the minister's home burglary legislation is as important to her as portrayed, why has it not been the highest priority for debate this week, and when will it be brought on?

Mrs L.M. HARVEY replied:

(1)–(2) I thank the member for Butler for this question. This question comes back to the amendment on the notice paper to our home burglary legislation, put there by the member for Butler. The member for Butler is correct, in that currently the law sets out a standard for dealing with people with mental illness and determines whether those persons are criminally responsible to stand trial. Under the Criminal Law (Mentally Impaired Accused) Act, if the offender at the time of the trial has a mental impairment that renders them unable to understand the nature of the charge, the requirement to plead, and the purpose of the trial, they are deemed not fit to stand trial. Therefore, they would not be affected by the member for Butler's amendment.

Section 27 of the Criminal Code provides a defence for an offender who can prove that at the time of the offence, as a result of mental impairment, they were not capable of understanding what they were doing, and they could not control their actions or know that what they were doing was wrong. Those people would not be affected by the member for Butler's amendment. The member for Butler's amendment, put simply, provides an avenue for people who do not satisfy the existing provisions of the Criminal Code to avoid a mandatory penalty, purely on the basis of mental impairment. Under our laws, if people are deemed fit to stand trial—bearing in mind they have already satisfied the test of those other provisions of the code—they will be treated equally; and, if convicted, they will be subject to a mandatory penalty and will be penalised equally.

Our legislation has been put in place in this state to provide relief for the victims of crime. Those minimum mandatory sentences are there for us to reset the baseline to ensure that those victims of crime can see that those violent offenders are placed behind bars for a long time, thereby protecting the community from the actions of those offenders. That is why that legislation is in front of this house, and I look forward to seeing that legislation debated. I put it to the member for Butler and to the Labor opposition that it is not going to satisfy the community of Western Australia if they just sit there and say, "Well, we don't oppose it." They either support the legislation or they oppose the legislation. That is how it works in this place. If they do not agree with the legislation as constructed, vote against it! Vote no! That is what this place is all about. I look forward to hearing their views and seeing them vote,