

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

Consideration in Detail

Resumed from 11 March.

Clause 5: Section 279 amended —

Debate was adjourned after the clause had been partly considered.

Mr J.R. QUIGLEY: Previously, I had asked the Minister for Police about clause 5(2), which will insert proposed section 279(5A). I now turn to clause 5(3), which will insert proposed section 279(6A) and which has to do with juveniles. I understand that this clause will provide that when a juvenile has committed murder during aggravated home burglary, there will be a minimum mandatory term of three years' imprisonment. I want to know how the minister arrived at that minimum mandatory term of three years' imprisonment, or is it only, as the minister said in a global answer before, because that is Liberal Party policy?

Mrs L.M. HARVEY: That was consistent with the election commitment that was made.

Mr J.R. QUIGLEY: We have gone through this before and have at least been able to clarify it, but the minister was not able to take us to any sentencing database other than the one held by the Director of Public Prosecutions in relation to appellant cases. Do I understand, therefore, that if an occupant is murdered by a juvenile in the course of an aggravated home burglary, the Liberal Party will be happy for that juvenile offender to be sentenced to three years' imprisonment?

Mrs L.M. HARVEY: If the member for Butler reads through subclause (3), it states —

- (6A) If the offence is committed by a juvenile offender in the course of conduct that constitutes an aggravated home burglary and the court sentences the offender under subsection (5)(a) but does not impose a term of life imprisonment, it —
- (a) must, notwithstanding the *Young Offenders Act 1994* section 46(5a), impose either —
 - (i) a term of imprisonment of at least 3 years; or
 - (ii) a term of detention under the *Young Offenders Act 1994* of at least 3 years,

So the maximum penalty for murder committed in the course of an aggravated home burglary still remains at life imprisonment, but we are mandating a minimum of three years.

Mr J.R. QUIGLEY: 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, is the Liberal Party happy with a three-year term of imprisonment?

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.

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?

Mrs L.M. Harvey: Clearly.

Mr J.R. QUIGLEY: That is extraordinary. The Liberal Party would be clearly happy if, in circumstances in which the court does not impose a life term for murder, the judge imposed a three-year mandated minimum term.

Mrs L.M. HARVEY: Member, I will go back to my previous answer; I think I am answering the same question again and it is just being put to me in different ways. We are saying that as a minimum we require the court to impose a term of imprisonment of three years. However, with a successful conviction of a young offender—we are talking about 16 and 17-year-olds—for murder committed in the course of an aggravated home burglary the term imposed could be life imprisonment. We have been very clear in our articulation to the community that we would prefer to see sterner sentencing, so as a minimum we have arrived at three years. However, clearly, the court can impose a term of up to life imprisonment, and I think the community would like to see more terms of life imprisonment, to be honest.

Mr J.R. QUIGLEY: Certainly, but the government is bringing this legislation before Parliament to provide that when the court does not impose life imprisonment for murder, the government would not complain if the court followed this legislation and imposed a three-year term of imprisonment.

Mrs L.M. HARVEY: I put it to the member that if he thinks that that mandatory minimum term of three years is too low, by all means he should put an amendment on the notice paper and we will consider it, but the feedback that I am getting through the course of this debate is that there seems to be a general opposition to any mandating of time or any mandatory minimum terms. We have arrived at a mandatory minimum term of three years for the offence of murder committed in the course of an aggravated home burglary. Obviously, the court can impose a term of life imprisonment. A review of the Young Offenders Act is in train and that will look at a range of penalties and options under the Young Offenders Act, which admittedly does not come into consideration with this legislation. However, this is what we have arrived at, member for Butler. If the member thinks that it is not harsh enough and it needs to be harsher, by all means he should move an amendment.

Mr J.R. QUIGLEY: This is the government's legislation and is it not true that when the government took this to the people—we always said we will respect the people's —

Dr A.D. Buti: Wishes.

Mr J.R. QUIGLEY: No. I am sorry; it is just that “mandate” is being used in the English language in two different senses. The government sought a mandate from the people, not by way of a term of imprisonment—I stalled for a minute to look for a different word to differentiate—and is it not true that at that time the Liberal Party said, “Will you support our legislation or not, Mr McGowan?” Mr McGowan said, “You put it up; we will support it.” That is the truth is, is it not? The minister was there.

The ACTING SPEAKER: The question is that clause 5 stand as printed.

Mr P. PAPALIA: She was not going to speak.

Mr J.R. QUIGLEY: I will start again. So there is no dispute after the event, the minister has already said that this legislation was prepared in consultation with the Attorney General—so we take it that both the minister and the Attorney General will have no complaint if a judge imposes what the government mandates as a minimum sentence for a 17-year-old who murders someone during the course of an aggravated home burglary. In that instance, there would be no room for complaint by the minister or the Attorney General; is that correct?

Mrs L.M. HARVEY: In response, I think I have been very clear that this legislation sets a minimum mandatory penalty that we think is the minimum acceptable in the context of life imprisonment being the maximum penalty for this offence. In response to the member's earlier question about what the Leader of the Opposition may or may not have said, members of the opposition in this place have said that although they respect the government's mandate to bring the legislation forward, they will not oppose it. The opposition is not saying it is supporting it and I do not believe that the Leader of the Opposition has ever said that he or the Labor Party will support it—merely that they will not oppose it. Given that we argue about semantics in this place, there are two different nuances on what action can be taken in this place with whether the opposition supports legislation or opposes legislation. Not opposing legislation is somewhat misunderstood, I would put to the member for Butler, by the electorate. The electorate expect people to support it or oppose it.

Mr J.R. QUIGLEY: It is supported only when a division comes on. There may well be a division in the other place; we do not know. But the minister knows that there will be a division here only if one government member votes no. That is true, is it not? No-one on this side will vote no. There will be a division and a vote taken only if one of the coalition members votes no when a vote is called; that is correct, is it not?

Mrs L.M. HARVEY: I am prepared to answer questions that are relevant to the legislation.

Mr J.R. QUIGLEY: Why did the minister give that answer? The minister's answer before was not relevant to the legislation; is that correct, minister? Can we now regard the answer that she went on about at some length—support or oppose or not support or not oppose—as a total irrelevance because she called that point; is that correct?

The ACTING SPEAKER: The question is that clause 5 stand as printed. Member for Warnbro.

Mr J.R. QUIGLEY: Let the record say that the minister —

The ACTING SPEAKER: You need to sit down, member for Butler. The member for Warnbro did not make a speech.

Mr P. PAPALIA: Mr Acting Speaker, I would very much like to hear from the member for Butler.

Mr J.R. QUIGLEY: In prefacing my next question, the minister regards what she said about support or opposition as totally irrelevant to this legislation and it will come to a vote only if someone calls for a vote. That is the position, is it not, minister? Is the minister going to sit mute again and stitch her lips? I will ask the

question, because the minister is sitting there mute without the ability to answer. If a judge sentencing a 17-year-old offender for murder during an aggravated home burglary determines that a sentence of life imprisonment for a 17-year-old is inappropriate and follows the government's legislation and imposes the three-year mandatory minimum sentence, that would be a record-low sentence in Australia for murder—a record low by decades—and it would be outrageous. Is that not the truth? The government is pushing down the scale of the sentences by setting a record low for murder. Is that not the truth of the Liberal government's legislation?

Mrs L.M. HARVEY: I think I have been very clear that we are mandating a minimum penalty of three years to a maximum of life imprisonment. As the member for Butler alludes to, obviously, to satisfy all the aspects of a murder charge, there needs to be some intent. Looking for charges of murder in circumstances of an aggravated home burglary is likely to be somewhat of a rare event. As I said to the member for Butler, people who oppose legislation and object to —

Point of Order

Mr J.R. QUIGLEY: This is irrelevant. The minister has already said that questions of opposing or supporting are irrelevant. The minister must be consistent.

The ACTING SPEAKER (Mr P. Abetz): The minister is under no obligation to be consistent. This is not a point of order.

Mr J.R. QUIGLEY: Government members called a point of order on me when I asked the question.

The ACTING SPEAKER: If consistency is the issue, I would have sat the member down many times; indeed, many members would need to be sat down.

Mr J.R. QUIGLEY: Then I can ask a question about that.

The ACTING SPEAKER: Minister, if you wish to answer the question, you may.

Debate Resumed

Mrs L.M. HARVEY: To labour the point, in circumstances of aggravated home burglary in which a young offender fits the criteria of this legislation and is convicted of murder in circumstances of aggravated home burglary, he can be imprisoned for life at the discretion of the court. However, if this legislation is passed by both houses of Parliament, we will demand of the courts a mandatory minimum sentence of three years' imprisonment. When the courts sentence an offender, they will have to work upwards from three years' imprisonment to a maximum of life imprisonment. It is pretty clear. I think I have answered that question numerous times.

Mr J.R. QUIGLEY: In her answer, the minister said that the government will be mandating a minimum sentence and that the courts must work upwards from there. The government will therefore be relying on the exercise of a judge's sentencing discretion, will it not? Has the minister not already said that she does not trust judges to deliver on community expectations in the exercise of that discretion? That is a fact, is it not? The minister can laugh if she wants to, but the families of murder victims and the judiciary are not laughing.

Mrs L.M. HARVEY: The reason for my wry smile, member for Butler, is that I have heard the member argue that we are taking away the discretion of the judiciary by requesting that it imposes mandatory minimum terms in the context of a maximum sentence that exists for every offence, but now he is saying that we are allowing the judiciary too much discretion. I have always said that this legislation will still allow judicial discretion. We are just setting mandatory minimum terms that are consistent with community expectations.

Mr J.R. QUIGLEY: The minister has delved into the community's expectations. No, I do not need to say this; this would be best said before the press. I think that last answer is most revealing.

Mr P. PAPALIA: I have been listening closely to the minister and I note that she said that the government arrived at the minimum penalty of three years' imprisonment for juveniles who commit murder during the course of aggravated burglary. How did the minister arrive at that particular penalty, noting that it has been two years and one month since this legislation was promised by the Premier during debate at the last state election? What process was conducted to arrive at the decision that three years' imprisonment should be the minimum mandatory penalty for murder committed by a juvenile?

Mrs L.M. HARVEY: Member for Warnbro, the way that the commitment was put to the community was that a range of serious violent and sexual offences occur within the context of aggravated home burglary. For the sake of consistency, and given the requirement to treat juveniles differently from adults, we have come up with a graded system. When a sentence of life imprisonment is imposed for adults, as we discussed previously, we settled on 75 per cent of the maximum term, and with life imprisonment we have mandated the minimum to be 15 years' imprisonment, because life imprisonment can obviously be longer. We have gone through the range of offences that fit the remit of violent and sexual offences that occur during the course of a home burglary and

tried to put some consistency across the mandatory minimums that we would require in the context of those offences.

Mr P. PAPALIA: I thank the minister for that. I understand that the government has set a mandatory minimum. I assume that that is because in keeping with the overall approach to the legislation, the government wants to impose upon the judiciary mandatory sentences at the bottom with mandatory minimums for adults being much higher. I am interested to know why the government chose three years' imprisonment. In addition to the line of questioning the member for Butler pursued, I will pursue it from a different angle. Can the minister tell me whether there have been any murders committed by juveniles for which there was a sentence of fewer than three years' imprisonment at any time in the course of the two years' preparation that was undertaken or in Western Australia's judicial history? I assume that in the two years and one month since the Premier made his election promise, and with all the resources available to the minister and her ministerial office, that a significant amount of research has been conducted. I assume also that if three years is being set as the minimum, there must have been some concern that some members of the judiciary would not sentence a juvenile to three years' imprisonment for a murder that was caused during the course of a break-in. I would appreciate it if the minister could enlighten us.

Mrs L.M. HARVEY: I alluded to this earlier. It is very rare, thank goodness, for a murder to be committed in the course of aggravated home burglary in Western Australia, so trying to find a trend line for those offences would be extremely problematic.

Mr P. Papalia: I am asking you if there were any.

Mrs L.M. HARVEY: I do not believe that there have been any; it would be rare. One would not necessarily be able to settle on a trend line when looking for the sentencing history on what are a small number of offences. To satisfy the elements of murder committed in the course of aggravated home burglary, the element of intent to commit murder and other aspects have to be proven. It is rare. As I said previously, the most common area that we are addressing is aggravated sexual penetration, sexual assault and grievous bodily harm.

Mr P. Papalia: What we are addressing right now —

Mrs L.M. HARVEY: Let me finish, please.

Mr P. Papalia: No, it is —

Mrs L.M. HARVEY: Let me finish; the member can ask a question in a minute.

The ACTING SPEAKER: Member for Warnbro, the minister has the call.

Mrs L.M. HARVEY: We are going through clause by clause according to each offence under the Criminal Code, but the member must understand that there must be consistency across the range of offences that occur within the remit of violence and sexual violence in the course of aggravated home burglary. If the member looks at this proposed subsection in the context of the other subsections and the other amending clauses, he will see that there is consistency with the way we have set the mandatory minimum penalties in the context of the maximum penalties and in the context of the seriousness of the offences. The member cannot pull out one individual aspect, because we are going for consistency across the range of offences.

Mr J.R. QUIGLEY: As legal counsel, I have certainly represented youths who have committed murder during the course of aggravated home burglary. I can think of one right off the top of my head.

Mrs L.M. Harvey: When was that?

Mr J.R. QUIGLEY: The murder of Lolly Bill outside of Kojonup, but that is another case. I guarantee the minister that the offender certainly did not get three years' imprisonment. I will broaden the member for Warnbro's question. Since 1829, has there been a case in which a youth has murdered someone in the course of a burglary and received fewer than three years' imprisonment?

Mrs L.M. Harvey: I have answered that question previously.

Mr J.R. QUIGLEY: That is the first time that question has been asked.

Mr P. PAPALIA: I will follow on with a question to give the member for Butler an opportunity to rise again. I assume that the answer to the previous question was no, because the minister indicated that she had already answered that question. The reason for this line of questioning relates to the manner in which the minister has presented this law to the Western Australian public. The minister has argued the case that this law is necessary because of inadequacies on behalf of the judiciary of Western Australia to reflect the concerns of the Western Australian community, yet this bill will impose a minimum sentence on juveniles convicted of murder—who break in and kill somebody—that is lower than has ever been given by any judge in the entire history of Western Australia. When the minister earlier berated the opposition for inconsistency, the point of the question is reasonable. The only argument the minister has offered is that it is consistent with other penalties

imposed on juveniles for other parts of this law. So what? Is it easier to write “three years” as the minimum term every time a penalty is written? Does it save on ink to be repetitive with the penalties? Is that the only justification? Are the thought processes such that we do not want to stretch ourselves to reflect how frequently the judiciary does not reflect the expectations of Western Australians with minimum penalties for murder by juveniles who break into homes? The minister cannot be bothered doing the work. She cannot come into this place and present a more cogent and reasoned argument than was presented by the Premier, and subsequently by the Minister for Police, for the last two years and one month since that debate and promise was made.

The extent of the Minister for Police’s argument, as a minister of the Crown on behalf of the Barnett government in Western Australia, is to say, “Judges don’t reflect people’s expectations; we’re going to make them.” The minister has told us that a judge has never imposed a penalty of less than three years’ imprisonment for this particular offence, but she is okay with that. The minister does not see that that goes to her credibility. That is what I was talking about the last time we debated this legislation. It goes to not only the credibility of this law, but also the Minister for Police’s credibility in introducing this law into this place if she cannot provide evidence to suggest, firstly, there is a need for it and, secondly, that the law will make any positive impact. Will it be better for Western Australians, rather than just another bit of bureaucracy or another law so the minister can say in front of the cameras, “We have imposed another law”? It is faux tough; it is Clayton’s tough. It is not real if the minister cannot provide evidence to demonstrate that it will work, or there is at least an expectation that it will work, and also to benchmark the outcome. If the minister cannot tell us, “This is what happened before and here’s what I expect will occur after I impose this law”, how will we know whether the minister has succeeded?

It is convenient for the minister that we cannot know. If the minister’s argument stretches all the way down to standing in front of the cameras for a couple of minutes to give a few glib one-liners, that is convenient, but it is not a mature way to progress legislation in Western Australia. It is certainly not a mature and reasonable way to try to make society better, which I am assuming is the intent. I assume that is the minister’s objective. That is certainly what I want to do in this place. When the Labor Party takes government from the Liberal Party in two years’ time, that is what the Labor Party will do. In the meantime, the minister has the responsibility to try to make things better, not worse. The minister’s only argument is that she cannot be bothered picking a number. She picked the number 3 because that is somewhere between two and five. That is about the extent of the minister’s argument. That is pretty poor. I am happy to pursue it at every single clause to point out the inconsistencies in the minister’s argument, and the lack of credibility of not only this law but also this government. It does not matter whether the Labor Party votes for it or not; we will pursue every single opportunity to show how bereft the minister’s argument is in relation to this legislation. If the minister cannot tell us anything else, we have to assume that she is okay with having no credibility.

Mr J.R. Quigley: I am very interested in what the member is saying.

Mr P. PAPALIA: I was just about to sit down. I will stand briefly; I had better pose a question for the minister.

Mr I.C. Blayney interjected.

Mr P. PAPALIA: Am I keeping the member awake back there? Sorry; if he wants to get some sleep, just go out in the hallway and lie on the couch. There are some nice couches out there.

The ACTING SPEAKER (Mr P. Abetz): Member for Warnbro, please —

Mr P. PAPALIA: The member will be able to put his head down. He is not that tall; he will fit on those couches out there!

The ACTING SPEAKER: Member for Warnbro, please focus on the clause.

Mrs L.M. Harvey: Did you just make comment about the person’s physical features? Which member is back there? That is a lovely thing to say!

Mr P. PAPALIA: I withdraw the comment. If it is offensive to say that he is not that tall —

Mrs L.M. Harvey: It is offensive and you should withdraw unequivocally.

Mr P. PAPALIA: If it is offensive to the member to say that he would fit lengthways to sleep on those couches rather than in here, I am sorry. I apologise and I withdraw.

Mrs L.M. Harvey: Short on stature; big on quality.

Several members interjected.

Mrs L.M. Harvey: And substance—which is something you lack!

Mr P. PAPALIA: Sadly, the minister’s legislation is short on stature and short on quality.

The ACTING SPEAKER: Members, let us get back to the clause before us.

Mrs L.M. Harvey: What an offensive comment; goodness me.

Mr P. PAPALIA: Toughen up! I thought you were the tough guy. You are the tough guy of this chamber—bringing in these tough laws. I thought you would be able to deal with that.

Mrs L.M. Harvey: The last time I checked, I was a woman!

Mr P. PAPALIA: “Guys” is universal at the moment. It can be used for men and women.

Mrs G.J. Godfrey: So you say.

Dr A.D. Buti: Come on, Belmont!

The ACTING SPEAKER: Members, let us get back to the clause, thanks.

Mr P. PAPALIA: I’m feeling battered—stop!

The ACTING SPEAKER: We are on clause 5, in case the member has forgotten.

Mr P. PAPALIA: Proposed section 279(6A) is the one I am interested in. With regard to arriving at the term of imprisonment of at least three years, minister, observing there has never been a case in which a juvenile has committed murder after breaking into a home and received less than a three-year penalty, what was the lowest penalty given for that particular offence?

Mr J.R. QUIGLEY: Do not ask her a question; she does not know!

Mr P. Papalia: That is a reasonable question.

Mr J.R. QUIGLEY: They do not know this. They know how to get votes; they do not know anything about the law.

The ACTING SPEAKER: Please direct your comments through the Chair.

Mr J.R. QUIGLEY: Of course, Mr Acting Speaker.

On the advice of the police advisers sitting next to the minister, she said that in the course of the commission of this offence there will have to be certain elements proven. Does the minister recall that answer?

Mrs L.M. Harvey: Yes.

Mr J.R. QUIGLEY: That was proving intent. In the course of an aggravated home burglary during which a murder is committed, could the minister please tell me the intent the prosecution would have to prove? It was my understanding that this Parliament, years ago, removed the requirement to prove intent in those circumstances. We want to put the minister’s answers to the Attorney General in another place. He knows a little about the law. If, in the course of committing an aggravated home burglary, a death occurs at the hands of the accused—that is in the course of prosecuting an unlawful act or purpose—what is the intent that the minister said needs to be proven?

Mrs L.M. HARVEY: I am sure the member for Butler is aware of this, but for the purpose of *Hansard* and other members who may not be as au fait with the Criminal Code, section 279, “Murder”, states —

- (1) If a person unlawfully kills another person and —
 - (a) the person intends to cause the death of the person killed or another person; or
 - (b) the person intends to cause a bodily injury of such a nature as to endanger, or be likely to endanger, the life of the person killed or another person; or
 - (c) the death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life, the person is guilty of murder.

There are a series of alternative offences, which I will not read out. It goes on —

- (2) For the purposes of subsection (1)(a) and (b), it is immaterial that the person did not intend to hurt the person killed.
- (3) For the purposes of subsection (1)(c), it is immaterial that the person did not intend to hurt any person.

And so on. Member, I said that elements of the crime needed to be proved for a successful conviction of murder in the course of an aggravated home burglary. I was correct in what I said. I am sure it would be a riveting debate for me to read out the rest of section 279 of the Criminal Code. I am sure that members can apprise themselves of that information if they so choose.

Mr J.R. QUIGLEY: The minister has read excerpts from section 279 of the Criminal Code of Western Australia. But this is the truth, is it not? It states —

(1) If a person unlawfully kills another person and —

Most importantly, during a home burglary —

...

(c) the death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life, the person is guilty of murder.

They do not have to prove the intent there, do they?

Mrs L.M. Harvey: No, they do not.

Mr J.R. QUIGLEY: Therefore, a person can be prosecuted without there having to be proof of intent to kill. Is that not the correct situation?

Mrs L.M. HARVEY: As I said previously, that is correct. One of the elements of a crime that can be proved and is consistent with section 279(1)(a) is that the person intends to cause the death of the person killed or that of another person. As I said, other elements of the crime will always need to be proved as well. That is murder, and our amendment then prescribes a penalty for murder committed in the course of an aggravated home burglary. The maximum penalty for this offence is life imprisonment. Of course there are other aspects of that crime that need to be proved to get a successful conviction.

Mr J.R. QUIGLEY: The minister said before that it is Liberal Party policy—I am emphasising this now that the Premier has returned to the chamber—and if the judge does not inflict life imprisonment as the penalty, the Liberal Party would have no complaint if, in the case of home burglary during which there was a murder, the judge complied with this legislation and inflicted a mere three years. That is the truth, is it not?

Mrs L.M. HARVEY: That is not the truth at all. We think the judiciary should start from a three-year penalty in the context of a maximum of life imprisonment. That is a pretty wide range being left to judicial discretion. If the member for Butler would like to shorten that range, by all means he can put an amendment on the notice paper and we will consider it.

Mr J.R. QUIGLEY: The minister said that a minimum of a mere three years for murder was arrived at to get consistency throughout these amendments. Mr Acting Speaker, I do not want a point of order to be taken on this. I am looking at the consistencies of the bill, so I need to look at other clauses concurrently. Referring to proposed section 297, which we will get to soon, assault occasioning bodily harm has the same statutory minimum penalty as murder, does it not? The mandatory statutory minimum penalty for aggravated home burglary involving murder is being made the same as the minimum penalty for giving someone a black eye during the course of an aggravated home burglary, is it not? Giving someone a black eye during an aggravated home burglary attracts a mandated minimum penalty of three years, yet murdering someone during an aggravated home burglary attracts exactly the same mandatory minimum. How does that work on the question of consistency?

Mrs L.M. HARVEY: Section 297 of the Criminal Code refers to grievous bodily harm, and we would be hard-pressed to satisfy the court that a black eye constitutes grievous bodily harm.

Mr J.R. QUIGLEY: I said bodily harm.

Mrs L.M. Harvey: You said section 297, member.

Mr J.R. QUIGLEY: The minister would agree that breaking someone's jaw is grievous bodily harm. Entering a house, punching the homeowner in the face and breaking his or her jaw attracts the same mandatory minimum as murdering them; is that not the case?

Mrs L.M. HARVEY: As I said previously, we are mandating minimum sentences, but maximum sentences are still consistent. There is a maximum term of life imprisonment for murder committed in the course of an aggravated home burglary. There is a maximum term of imprisonment of 15 years, for example, for manslaughter under proposed section 280. A range of maximum penalties are still available to the courts.

Mr J.R. QUIGLEY: In announcing this policy, the Premier said that the reason for bringing in these mandated minimum sentences is that everyone knows that some members of the judiciary are not doing the right thing and are not delivering appropriate sentences to meet the community expectation. If we look at an aggravated home burglary during which someone is punched in the jaw, the maximum term is 10 years' imprisonment, but if the person is murdered, there is a maximum of life imprisonment. The minister says that the maximum mandated

minimum should be the same for both the most serious offence on the Criminal Code and punching someone in the jaw and breaking it—the same statutory mandated minimum. How does that work?

Mrs L.M. HARVEY: Could the member explain what he means by “maximum mandated minimum”?

Mr J.R. QUIGLEY: Sorry, mandated minimum. We are talking about aggravated home burglary involving murder having a maximum penalty of life imprisonment. Aggravated home burglary involving grievous bodily harm, such as breaking someone’s jaw with a punch, has a maximum sentence of 10 years’ imprisonment. However, the minister has arrived at a mandated minimum for both sentences that is exactly the same. How does that work? How is that meeting the requirement of consistency?

Mrs L.M. HARVEY: That is in the context of the Young Offenders Act and we are talking about juvenile offenders. I have previously flagged that a review of the Young Offenders Act is in train and it may well be that some of those mandated minimums could be revisited in the context of the Young Offenders Act. If the member would like to see those raised, by all means he can put them to me. The policy we put to the community was that, in the case of adults, there would be a mandatory minimum penalty of 75 per cent of the maximum for the offence. That is where we have worked from. Obviously, we have to consider a different arrangement for young offenders for all the reasons we are well aware of. We have arrived at this mandatory minimum of three years in the context of clause 5, which has a maximum penalty of life imprisonment. If the member would like to change that, he can put an amendment on the notice paper. However, we have arrived at that point. If the member disagrees with it, I suggest he make an amendment.

Mr J.R. QUIGLEY: I just want to know how 15 years was arrived at as being 75 per cent of the maximum penalty. In the case of *Kuzimski v The State of Western Australia* [2012] WASCA 202, aggravated home burglary involving murder attracted a minimum non-parole period of 32 years. The court imposed a minimum non-parole period of 32 years in *Kuzimski*. How do we get to the situation of saying that 15 years is 75 per cent of that? This is dumbing down the sentencing, is it not? The court is inflicting a sentence of 32 years and the minister is saying that the mandated minimum should be 75 per cent of that. But 15 years does not even equate to 50 per cent of 32 years. How did we get to this ridiculous situation?

Mrs L.M. Harvey: The legislation is in front of you, member.

Mr J.R. QUIGLEY: I understand that the legislation is in front of us but this was not explained to the community at the time of the election. On behalf of the community, as encouraged by the Leader of the House, Hon John Day, MLA, who said the opposition’s job is to scrutinise this legislation, we are encouraged to do that. We are not opposing it.

Mr C.J. Barnett: I think you are. Everything you are saying is in opposition to this bill.

Mr J.R. QUIGLEY: In what part, Premier?

Mr C.J. Barnett: Everything.

Mr J.R. QUIGLEY: The Premier has gone bonkers. We have said nothing in opposition. We are just asking for an explanation. I will not be intimidated by the Premier of Western Australia by saying that I am speaking in opposition to something that I would not oppose. I am just asking: when the court is handing out 32 years for murder in the course of an aggravated burglary, how does the government end up saying that it will mandate the minimum at less than half of what the court is handing out?

Mrs L.M. HARVEY: The member for Butler would understand that at present it is open to the court to impose no sentence for murder in circumstances of aggravated home burglary. At present, the legislation is that a court can impose a term of life imprisonment but it is open to the court to impose no term of detention and no term of imprisonment. We are saying that there needs to be a mandatory minimum, and that is what this legislation addresses.

Mr J.R. QUIGLEY: Is that the minister’s understanding of the law in Western Australia—that a Supreme Court judge can impose no penalty for someone convicted of aggravated home burglary who murders someone in the course of that? Did I get that right or am I going bonkers? The minister said that a judge does not have to impose a penalty on a murderer who has killed someone in the course of an aggravated home burglary. Do I understand the minister right?

Mrs L.M. HARVEY: It is up to the court. At present, the court can impose a penalty up to the maximums that are set out in the Criminal Code, and there are maximum terms of imprisonment set out in the Criminal Code. We are seeking through this legislation to amend the Criminal Code to set minimums. A range of options is available to the court in sentencing a person for any crime. Yes, other factors need to be taken into consideration but they are at the court’s discretion. This legislation requires the courts to exercise that discretion within

a mandated minimum that this legislation will set. The legislation is not seeking to amend the maximums that exist in the Criminal Code at present.

Mr J.R. QUIGLEY: Yes, but my question was: did I understand the minister correctly to say that at the moment a Supreme Court judge does not have to impose any penalty? I do not have the *Hansard* in front of me but I want to put her answer both before the people of Western Australia and, most importantly, to the Attorney General in the other chamber. The minister is saying that as the law stands at the moment, a Supreme Court judge does not have to impose any penalty on a person if they have committed an aggravated home burglary and murdered someone in the course of it.

Mrs L.M. HARVEY: That is not what I said.

Dr A.D. Buti: Yes, you did.

Mrs L.M. HARVEY: I need to correct that. I intended to say that the court does not have to impose a penalty of imprisonment. The Criminal Code currently sets out maximum penalties of imprisonment or detention for a range of offences but the court does not have to impose a penalty of imprisonment or detention. It is up to the court to decide. The amendment to section 279 seeks to prescribe that a mandatory minimum penalty of imprisonment or detention needs to be applied for the various offences outlined in the amendment. At present, the court can impose a range of actions. It can suspend sentences; it can do a range of things. This amendment prescribes that for certain offences, the courts will no longer be permitted to suspend any term of imprisonment imposed and it needs to start at the bare minimum of prescribing a mandated minimum term of imprisonment or detention for the offences that are listed as part of this amendment.

Mr J.R. QUIGLEY: I will have to take this in pieces. Firstly, did the minister not say in her second reading speech that sentencing judges are constrained to follow in the exercise of their discretion the Court of Appeal and its decisions? Did she not say that in her second reading speech or does she not understand the question?

Mrs L.M. Harvey: I understand the question. My second reading speech is on the record. Where are you going with this?

Mr J.R. QUIGLEY: The minister said in her second reading speech that judges have to follow case precedent law. I am asking her to identify any case precedent, just one, since 1829 in which a court has not sentenced a person—first of all, I will deal with a suspended sentence—to an immediate term of imprisonment for murdering someone in the course of an aggravated home burglary. Can the minister name one case in which that has not happened?

Mrs L.M. Harvey: This question has been asked before and I have answered it a number of times.

Mr M.J. Cowper: Member, that case you mentioned before, was that a —

The ACTING SPEAKER (Mr N.W. Morton): Member for Butler, you have the call.

Mr J.R. QUIGLEY: I am taking an interjection.

Mr M.J. Cowper: In the circumstances of 32 years, was that a single offence or was it a cumulative offence?

The ACTING SPEAKER: Member for Murray–Wellington, the member for Butler has already had the call once. If you want to make a contribution, you will need to seek the call.

Mr J.R. QUIGLEY: I took it as an interjection. It was 32 years on each count. There were two murders.

The ACTING SPEAKER: Member, you do not have the call at the moment.

Mr P. PAPALIA: I would really like to hear more from the member for Butler.

Mr J.R. QUIGLEY: Given that Kuzimski was sentenced to a minimum non-parole period of 32 years on each count and there are two counts, how does a statutory minimum of 15 years for an adult equate to 75 per cent of what has been regarded as the maximum term, or is this like a chocolate wheel and we just wait to see what number comes up?

Mr P. PAPALIA: I will try to couch the question in such a way so that perhaps the minister can understand why I am pursuing this matter. It is two years and one month since the Premier stood in the leaders' debate and demanded the opposition support mandatory sentencing for aggravated burglary. At that time the penalties and the nature of the legislation were not revealed. There was no detail of how the government arrived at its maximum penalties. At the time of the debate, the government certainly did not tell the people of Western Australia that the minimum sentence it was going to impose on juveniles who murdered someone in the course of a burglary was going to be three years. I think it is reasonable to ask the minister and the Premier what research was conducted by the government that led it to decide upon three years as the minimum penalty for juveniles murdering someone when they break into a house. What was the evidence? What was the minimum

penalty imposed before this legislation came about? I am sure that in the two years and one month given to the government, with all the resources available to it, there was an opportunity to carry out a search and find out what minimum penalty had been imposed on a juvenile who murdered someone.

I still think that is a reasonable question to ask. In the event the minister is unable to answer that question, it will indicate that not very much work was done in that two years and one month's time available to the government to get its act together. It will indicate that the law itself was made up on the run during the election campaign for the benefit of running the advertisements that had been prepared by Ben Morton. That is what it will suggest if the minister is incapable of answering. Can the minister tell us at least what was the lowest penalty imposed on a juvenile in the history of Western Australia, up to the current date of when the minister is trying to introduce this penalty of three years for murder?

Mrs L.M. HARVEY: I think the member is very well versed in some of the cases we raised in the second reading debate, which, admittedly, do not relate to murder committed in the course of an aggravated home burglary. A range of other offences were presented that the community was outraged about, and we have been through those. I summed up some of those in my reply to the second reading debate. Those cases involved serious sexual assaults committed against people in their homes. One case occurred to a victim while her daughter slept beside her, and there were a range of other offences. That has driven this government's policy commitment that we took to the electorate and we were very clear about a three-year mandatory minimum term of detention being applied to juveniles aged 16 and above who commit these serious physical and sexual offences. It was in our media release that the member has talked about in here ad nauseam as the only motivator for this provision, but community outrage over some of the cases we detailed was the catalyst for this legislation moving forward. Our position is presented in this amendment. It is up to the member to support it, oppose it or seek to amend it.

Mr P. PAPALIA: It is up to me to scrutinise legislation on behalf of the people of Western Australia. The minister has introduced it. It is up to her to justify how she arrived at a minimum penalty of three years. What was the lowest penalty ever imposed for the other offences of aggravated burglary to which the minister referred? Is she saying it was not murder that drove the need for the three-year minimum sentence? What minimum sentence was imposed for a juvenile for the other categories that we will come to in due course? What was the minimum penalty ever imposed in the jurisdiction of Western Australia that led the minister to believe that the judiciary was not reflecting the expectations of the people of Western Australia?

Mrs L.M. HARVEY: I think I have made it pretty clear that this legislation mandates a minimum penalty for a range of offences that have been identified within the amendment. We are not adjusting the maximums; they are still available for the court to prescribe at its discretion. We have been very clear about that. No doubt, people in the community believe this is not harsh enough and other people in the community, many of whom have been very vocal, believe that this removes all judicial discretion and we are being too harsh. We need to make a judgement call as a government and we have made a judgement call that sits here in this amending legislation. I know the member disagrees with it and that under the guise of scrutinising it, he is not opposing it, not supporting it and not rejecting it. I understand the semantics of that argument but the legislation is here. It is up to the member to seek to amend it. If he thinks it is not harsh enough, he should put an amendment on the notice paper, and I will be happy to entertain it.

Mr P. PAPALIA: I have to respond because the minister has not answered my question. I will place on the record the observation that the government is incapable of telling us what has ever been the minimum penalty imposed on a juvenile who has murdered someone in the course of a burglary. The government has not conducted what I would have thought was the minimum research in crafting a bill that imposes a mandatory sentence. It has not been able to do that research. In the two years and one month since the Premier made his promise and his demand during debate in the election campaign, with all the resources of government, the government has been too lazy to find out whether the accusation it made against the Western Australian judiciary was justified. It also indicates that maybe it has imposed too low a level of penalty. Who knows? Perhaps it is too low a level, but the minister cannot tell us whether it is, because she has not bothered to find out. This confirms the inadequacy of this bill and the minister because she has come into this place without being able to justify how she chose the minimum sentence of three years. I do not mind that she chose three years because we said we would not oppose this bill, but I do mind that she has not been capable of even saying what was the minimum penalty prior to now. That goes to the heart of the integrity of the bill and to her integrity and demonstrates that both are lacking.

Dr A.D. BUTI: Minister, enough questions have been asked about whether the research has been done. I assume by the answers that the research has not been done. I suppose this brings us to the issue of mandatory sentencing being arbitrary. Will the minister concede that the three-year minimum sentence she has selected is really an arbitrary determination? I am interested in knowing what process the government has followed to lead it to

decide on three, five or 10 years. What methodology has she utilised to come to these arbitrarily mandated sentences? I think it is important that Parliament know.

Mrs L.M. HARVEY: As I said, we made a commitment to the community that for adults, the mandatory minimum term would be 75 per cent of the maximum. We have made three years the mandatory minimum penalty for juveniles. We have not been looking at the maximum penalties in this context. A review of the Young Offenders Act is in train and I expect some of these matters to be addressed as part of that.

Dr A.D. BUTI: Does the minister concede, therefore, that the three years is an arbitrary determination?

Mr J.R. QUIGLEY: The minister is saying that the government arrived at a 15-year mandatory minimum for adults as 75 per cent of the maximum, yet we know that Kuzimski, number 29 on the DPP's database, got 32 years and Mikhail v the State of Western Australia got 37 years. Each committed wilful murder. How has the minister arrived at 15 years when the courts are imposing minimums of 37 years? I think the Premier is telling the minister not to answer.

Mr C.J. Barnett interjected.

Mr J.R. QUIGLEY: I object. The Premier can enter the debate. I have challenged him to do that but apart from facile interjections, he has not got to his feet once during this debate either during the second reading debate or in consideration in detail. I suggest that that is because he does not want to expose himself. I challenged him during my second reading speech to get to his feet and contribute to the debate, and he absented himself from the chamber. He has not participated in this debate at all apart from saying in his Premier's Statement that "My government will introduce the legislation." Apart from facile and incorrect interjections, the Premier has made no contribution whatsoever to explain the legislation. He has left it to this incompetent minister.

How has 15 years been arrived at when the courts are imposing 37 years and 32 years? For burglary involving a murder, how has 15 years been decided on, and a mere three years if the offender is 17—a mere three years? We were not told during the leader's debate, "Mr McGowan, I will legislate a mandatory penalty of three years for anyone aged 17 who burgles a home. Will you agree?" That is not what the Premier said—he has not said anything during this debate. I want to know, as the members for Warnbro and Armadale want to know, as all the legal profession want to know: how do you get to a miserly three years for robbing someone's house and murdering them? Whose brainwave was this? Ask the Attorney General whether it was his brainwave, but he says he does not want to discuss the bill; this is the minister's brainwave. How did the Minister for Police get to three years for murdering someone in their own home if the offender is 17 years old at the time of committing the offense? It is an outrage.

Mrs L.M. HARVEY: The Mikhail case that the member for Butler quoted would probably be close to the harshest penalty for murder ever meted out in this state's sentencing history. It was not a murder in the course of an aggravated burglary; it was a double murder—a very, very serious offence. My understanding of the case is that the offenders lured the victims to a business property. Both offenders had swipe card access under the pretext of collecting a computer. The victims entered the premises and were killed with shotgun blasts. The next morning the bodies were taken to a grave and buried. The bodies were found months later after extensive police searches, and the last scoop of the digger dug to the depth that the bodies had been buried. The victim's car was driven to a quarry and abandoned. That was one of the harshest penalties ever meted out by a court in Western Australia. I expected the member for Butler to come in here with extreme cases, but I thought that the member might be interested in the debate in the context of this bill, which will still allow the court to sentence up to the maximum prescribed. We are not adjusting that. We are just setting a mandatory minimum—and I think I have been very clear on that.

Mr J.R. QUIGLEY: The government is not mandating a minimum for murder per se, is it? It is only aggravated home burglary involving murder; is that not correct?

Mrs L.M. HARVEY: No, we are aggregating a mandatory minimum for murder that was committed in the act of an aggravated home burglary.

Mr J.R. QUIGLEY: Would the minister not agree that the community would view seriously a person being murdered while having their home invaded, or their relative's home invaded. After someone is murdered they have no opinion anymore; they will be up there with George Burns and others, probably having a cigar laughing at it—but not to make light of it. Obviously, a victim of murder, as opposed to a victim of aggravated sexual assault, has a view on such matters. But, for the relatives and other family—the minister's laughing—of a murder victim, would the community not regard it as a more serious circumstance when a person's home was invaded and that person was murdered in their own castle, rather than elsewhere? This is why the minister is introducing the measure in relation to aggravated home burglary, is it not? It is the violation of the home at the time the offence is committed, the minister says, that warrants the statutory minimum. Where is the starting point? Is the minister saying that 15 years equates to three-quarters of the maximum for aggravated home

burglary involving a murder? Is that what the minister is saying—that 15 years equals 75 per cent of the maximum penalty that a court could impose for aggravated home burglary in which a murder is committed?

Mrs L.M. HARVEY: No, I have explained that before. The member made reference to me laughing earlier. To correct the record, I was actually flabbergasted that the member would make a comment that a victim of murder might be up somewhere having a cigar with George Burns. These are very serious matters.

Mr J.R. Quigley: The victims do not have a view; they're dead!

Mrs L.M. HARVEY: Once again, the member cannot leave it alone.

This legislation is saying the mandatory minimum term will be 75 per cent of the maximum for a range of offences as part of this amendment that are committed in the course of an aggravated home burglary. In section 279, the maximum sentence for murder is life imprisonment, so we have settled on a mandatory minimum as a starting point for that offence as 15 years up to a maximum of life imprisonment, which the court, as the member said, in certain circumstances, can impose very harsh penalties if it sees fit. If this legislation successfully passes through Parliament, we will prescribe that the mandatory minimum term for that offence needs to be 15 years, and the court can add additional years upon that term of imprisonment, according to its discretion, up to the maximum.

Mr P. PAPALIA: I was just reading the second reading speech, and I understand the minister cited a couple of examples in which she felt the judiciary did not reflect community expectations. Can the minister tell us the percentage of sentences that did not reflect what she believes to be community expectations—that is, the 15-year minimum I assume the minister has arrived at as being reflective of community expectations? What percentage of sentences handed out, as we are on this clause, for murder during the course of a burglary did not reflect community expectation? What percentage of adult offenders in this case—we will stay away from the juveniles because the minister cannot answer that one—were given sentences that did not reflect community expectations, being, I am assuming, the 15 years that the minister has set.

How many? I assume there is some degree of analysis, because I do not believe that individual cases cited as the argument are ever very valid as far as making a cogent, reasonable argument for introducing a significant change to the law, as the government is arguing. In this case, what the government is doing is pretty significant. I would have thought that more than three cases would have been looked at. The minister would have looked at all offences of this nature over the last six years that the minister has been in government, or perhaps the last 10—or even the last five. I do not know. However, over a significant period of time, what percentage of those offenders who committed a murder in the course of a burglary did not receive 15 years as a minimum penalty?

Mrs L.M. Harvey: I have already addressed this, member.

Mr P. PAPALIA: I am asking that question because the minister has not addressed it. The minister has said, “It is our government policy.” She cited three examples, all of which have been refuted by the opposition’s lead speaker, as I understand it. That aside, whether the minister agrees with the arguments from the member for Butler in respect to those three cases that the minister cited is irrelevant. I ask a specific question with regard to the percentage of individuals who have committed this type of offence in a reasonable period, be it the last five or 10 years—whichever it is. I assume that the minister has done a degree of building her case and doing her research. What was the percentage that did not meet what the minister considers to be community expectations?

Mrs L.M. HARVEY: With respect to whether the government’s policy reflects community expectations, the record is there—the community has endorsed it. I put it to the member for Warnbro that there are a small number of these offences and, as I said at every media event that I attended when we announced the policy, thankfully, in Western Australia there are a small number of offenders who will be captured by these mandatory minimum penalties, because it is rare for violent acts to occur in the course of an aggravated home burglary. The government has made that clear. However the community expects appropriate sentencing, and even when there is one deviation towards a penalty that the community deems to be too low, that one is too many. If a person is a victim in those circumstances and an offender receives some of the penalties that I articulated very clearly in my second reading speech—I also corrected in my second reading reply the inaccuracies that the member for Butler put forward—we have deemed, and so has the community, that the sentencing is inappropriate, and this legislation corrects that.

Mr P. PAPALIA: Does that mean that the minister is incapable of telling me what percentage of offenders in any given time frame—say, the last five or 10 years—who were found guilty and sentenced for murdering someone during the course of a burglary were given a sentence lower than that which the minister has arbitrarily set as the community expectation, being 15 years?

Mrs L.M. HARVEY: As I said, when working from a small number of people, percentages are somewhat meaningless as statistical analysis. When dealing with a small number, we can bring forward a percentage, but a percentage from a small base is a meaningless statistical measure.

Mr P. PAPALIA: I concede that, but can the minister tell us how many? If the minister puts it in context, I will understand. Over the last 10 years, is it 10 juveniles or adults who have broken in and killed somebody and none of them have received a sentence of less than 15 years, or is it three, according to the cases the minister has cited and claims did not receive the sentence that she is arguing for? The minister should put that in context. It is still a reasonable way of conveying the argument, because the minister is going to say that we must understand that it is only a very unlikely scenario, but that on the occasions it does occur, in 75 per cent of cases, or whatever percentage it is, the judiciary has, nevertheless, in only that small number, reflected community expectations.

Mrs L.M. HARVEY: Once again we go back to one aspect of this amending legislation, which is to create the offence of aggravated home burglary. The difficulty with statistical analysis is the need to distil which of these offences occurs in the context of an aggravated home burglary, and this amending bill will create that offence. As I said, even then a statistical analysis of a small number of offences will not stand the test of scrutiny; it is not an appropriate way of managing that kind of data.

Mr P. PAPALIA: I want to make a final observation. The minister has made a very good argument for taking statistical analysis and research out of the hands of police and putting it into the hands of an independent authority that is fully transparent and responsible only for providing accurate information to the public of Western Australia. If the argument for not telling the public how many people in the last five or 10 years have committed murder during a burglary who have not received a sentence of 15 years is that it is too difficult to go through the data, I would have thought that it would not take too much effort for the minister to assign someone to go through all the murder cases in the past five or 10 years to determine how many of those were as a result of someone breaking into a house and robbing and killing the person inside. The minister has already said that this penalty would apply to not many people and that murder committed during a burglary does not happen very often. Murder does not happen too often either, yet it is happening far more often under a Liberal government and far more often under the Barnett government than ever before. I know it might sound as though it was a lot of cases, but, thankfully, I do not think it is a huge number.

The only argument for not revealing the number of cases is that it is not very supportive of the minister's argument. That is because it would show that on the very few occasions in which she has made the claim and has been willing to reveal that, in her words, the judiciary did not reflect the expectation of the community on those occasions, the number of cases to which she refers does not actually represent a very large percentage of the overall number, even if it is a small number. If the minister will not provide that information, I and anyone reading or listening to this debate will have to assume that it does not support the minister's argument and that is the reason she is not revealing the statistics.

Mrs L.M. HARVEY: I have answered this question numerous times, but I will go back to part of the purpose of this legislation, which is to effectively create the offence of aggravated home burglary. At the moment in the case of aggravated burglary, the courts do not necessarily report in their procedures whether the offence was committed in a home or another place. This legislation intends to create the offence of aggravated home burglary and then, clearly, address other violent physical and sexual crimes that occur in the context of those aggravated home burglaries so that we can get a more accurate picture without having to go through the records. Another compounding issue is that the judiciary does not have to necessarily release the information on its judgements and outcomes. I take the member's point, but a small number of violent offences occur in the course of an aggravated home burglary, and should this legislation pass through both houses of Parliament, we will have a very clear picture of how often that occurs in the community. Having set mandatory minimum penalties, we can have some confidence that the penalties will reflect community expectations.

Mr P. PAPALIA: That is exactly the point I am trying to make. The minister has repeated her justification for not revealing the statistics. If the minister does not tell us, for whatever reason, what the current situation is—in this case she is saying it is because a person is being charged with a different charge—I think that the criteria set around the new charge can easily be applied to the historical data to determine how many of that type of offence has occurred and what the sentences were. But if that is not done, we cannot benchmark the outcome. I will consistently put the argument that there should be an evidence-based approach to crafting laws in this field of crime and punishment to prevent people such as the minister and governments such as the one we have and similar governments we have had in the past of both political persuasions, from making a populist grab by introducing a law that is not justified by any evidence to suggest that it will work. This outcome of this law will be incapable of being assessed by the public or anybody because the government has created a new law and has started from a completely blank sheet. I know what will happen in two years' time when we go to the election. The minister will claim victory because she has created this law and we will not be able to determine whether or not it has been successful because there was no measurement of it. We will not be able to say that the rate of this

type of offence per 100 000 of the population, or whatever it is, has gone down because there has been a deterrent, which is the argument that the government consistently puts about these laws.

It has been argued in the second reading speech that these types of laws have a deterrent effect. I know that there is a punishment component to it and that there is even some a retribution component to the argument. I concede and agree with the minister when she says that there is an argument that we are excluding people from society. However, the argument about deterrence is pretty flimsy and it is impossible to assess if that information is not provided at this point. By the way, I am not that concerned about this part of the bill; my real issue with it is with the three-strike policy. I will talk about that later, and about the approach being taken in particular. The minister is talking about relative concern.

Mr J.R. Quigley: Dropping the standard to a statutory minimum of three years is most concerning!

Mr P. PAPALIA: Okay, that part is concerning; I give the member for Butler that. My concerns are with benchmarking and the ability to assess whether something has succeeded and the cost was worthwhile. I do not really apply that to this part of the change to the law; I am looking very closely for better justification and benchmarking when we get to the three strikes component of the law because I have some grave concerns about it.

Mr J.R. QUIGLEY: In answer to the member for Warnbro, he said that the statistics are not there, because this bill creates the offence of aggravated home burglary and so it is a new offence; that is why we do not have the statistical analysis.

Mrs L.M. HARVEY: I am pleased the member was listening. That is what I said.

Mr J.R. QUIGLEY: Was it the gentleman from the police department to the minister's right who gave her that advice? Is the gentleman to the minister's right responsible for this answer or is that the minister's own invention?

Mrs M.H. Roberts: Mr Penn.

Mr J.R. QUIGLEY: Was it Mr Penn's advice to the minister that aggravated home burglary as a new offence now being created or is that an answer that the minister invented for this Parliament? Is Mr Penn or the minister responsible for that answer?

Mrs L.M. HARVEY: I am responsible for everything I say.

Mr J.R. QUIGLEY: Could the minister tell me what sections 400 and 401 of the Criminal Code do? Do they not create the offence of aggravated home burglary? Has the minister misled this Parliament by saying that the legislation before this Parliament creates the offence of aggravated home burglary? Do not sections 400 and 401 of the Criminal Code of Western Australia create the offence of aggravated home burglary? Is that right or wrong?

Mrs L.M. HARVEY: If we go to section 401, we see that the circumstance of aggravation is that the burglary is committed in a place that is ordinarily used as a place of habitation.

Mr J.R. Quigley: I want to take this slowly. Did the minister say section 401?

Mrs L.M. HARVEY: It is section 401, which reads, in part —

- (a) if the offence is committed in circumstances of aggravation ...

Section 401(1) prescribes the penalties —

- (a) if the offence is committed in circumstances of aggravation, to imprisonment for 20 years; or
- (b) if the place is ordinarily used for human habitation but the offence is not committed in circumstances of aggravation —

Et cetera. The section reads, in part —

401.Burglary

- (1) A person who enters or is in the place of another person, without that other person's consent, with intent to commit an offence in that place is guilty of a crime —

The circumstance of aggravation is if that place is ordinarily used for human habitation. I do not know whether the member has a copy of the Criminal Code.

Mr J.R. Quigley: I have a copy of the Criminal Code. Don't you worry about me; you just worry about yourself.

Mrs L.M. HARVEY: Section 400 defines "circumstances of aggravation". Under section 400(1)(a) there is a range of circumstances in which a burglary would be committed in circumstances of aggravation. However,

this legislation creates a new offence that separates home burglary in a habitation as opposed to a burglary in another place.

Mr J.R. QUIGLEY: Is the minister saying that at the moment, prior to the passage of this legislation, there is no offence for aggravated home burglary? Prior to this bill before the chamber, there was no offence of aggravated home burglary—breathtaking!

Mrs L.M. HARVEY: I direct the member to clause 4. If a burglary is committed in a place of habitation, it becomes an aggravated burglary. I think I have made it pretty clear. I think I have answered the question.

Mr J.R. QUIGLEY: The minister has not answered it at all. The question is: does there already exist in Western Australia an offence of aggravated home burglary—yes or no?

Mrs L.M. HARVEY: Member for Butler, the offence of aggravated burglary exists; the offence of home burglary exists; and the offence of aggravated home burglary does not until this amending legislation goes through.

The ACTING SPEAKER (Mr N.W. Morton): The question is that clause 5 stand as printed. All those in favour say aye —

Mr J.R. QUIGLEY: No, I have a question. I stood up.

The ACTING SPEAKER: You have now and I will give you the call, member for Butler.

Mr J.R. QUIGLEY: All the government is doing, is it not, is mandating the statutory minimum terms for existing offences; is that not true?

Mrs L.M. HARVEY: We are mandating mandatory minimum terms for offences in the Criminal Code that will occur in the act of an aggravated home burglary.

Mr J.R. QUIGLEY: I understand it now. In contradiction of the minister's earlier answer, she is now saying that we are mandating minimum terms for offences that already exist in the Criminal Code. That is what the minister has just said, is it not?

Mrs L.M. HARVEY: That is one part of what the bill does, yes. I am sure I do not need to acquaint the member with the different aspects of the bill. There are several aspects to the bill. One is the creation of an offence of aggravated home burglary. Another is introducing mandatory minimum penalties for a range of serious sexual and violent physical offences that occur during the course of an aggravated home burglary. The next part of the legislation deals with amending the counting rules for recidivist home burglars.

Mr J.R. QUIGLEY: Could the minister take me to the section that creates the new offence of aggravated home burglary? I have heard the Commissioner of Police say—so he may need correcting—that two young people burgling a home together constitutes a circumstance of aggravation; that person's home is being burgled in circumstances of aggravation. I want Dr Karl to explain himself if the minister is right and he is wrong. He has always said, and he is quoted in the newspaper clippings that I have as saying, that the circumstances of a home burglary become aggravated once it is done in company.

Mrs M.H. Roberts: You are quite right and I think Dr Karl might be right.

Mr J.R. QUIGLEY: That is what Dr Karl says, but he is only a doctor—no, he is Commissioner of Police, sorry! I want to ascertain whether the minister is contradicting the Commissioner of Police when he says that someone commits aggravated home burglary when they do it with another person. A person burgling someone's dwelling or home in company is a circumstance of aggravated home burglary. That is what the Commissioner of Police says about the law. Does the minister agree or disagree with the Commissioner of Police?

Mrs L.M. HARVEY: As we have discussed and canvassed previously, member for Butler, there are several circumstances in which a burglary becomes aggravated burglary. Although it was last week, the member might recall that we dealt with clause 4 of the legislation, which amends some of the definitions in the Criminal Code. Clause 21 separates the offences of aggravated home burglary, aggravated burglary and home burglary. At the moment, we refer to them only as burglaries in circumstances of aggravation, as prescribed by section 400. The penalties are dealt with in section 401.

Mr P. PAPALIA: I will return to my previous line of questioning and the observations I made about statistics and benchmarking. In light of the fact that this legislation will create a new offence, new data will be garnered and accumulated. Is it the government's intention to make that information available to the public in the future so that we will be able to look at how sentencing is being enacted in response to this legislation? Will there be a public resource that we can access to determine whether or not the judiciary is reflecting our expectations?

Mrs L.M. HARVEY: I refer the member to clause 22, which deals with the review of this legislation.

Mr J.R. QUIGLEY: I previously asked the minister in consideration in detail what constitutes home burglary. The minister may recall her answer when she said that a home burglary constitutes entering any place that is a home and is ordinarily a dwelling. Did the minister not give that definition of “burglary” last week?

Mrs L.M. Harvey: No, I said a place ordinarily used for human habitation.

Mr J.R. QUIGLEY: That is the definition of what?

Mrs L.M. HARVEY: I refer the member to clause 4, which has been passed. It reads, in part —

The term *home burglary* means an offence against any provision of Chapter XXXIX (as enacted at any time) other than section 407 committed in respect of a place (within the meaning given in section 400(1)) ordinarily used for human habitation;

Mrs M.H. ROBERTS: I ask the minister to clarify for the house that different penalties will apply depending on where the offence occurs. I refer to a circumstance of aggravation in a shop, such as the offence that occurred to Pamela Lawrence at her jewellery shop. Will it be a vastly more serious offence if a woman is attacked in her home? If one of my constituents is in her shop, hairdressing salon or other business and somebody breaks in, thieves something—or attempt attempts to steal something—and injures, assaults or rapes the woman, will that be regarded as a less serious offence under this legislation? How will it sit with the minister to have two separate categories of penalties for what would appear to be quite similar offences?

Mrs L.M. HARVEY: The legislation defines a place that is ordinarily used for human habitation. We are separating that offence out as home burglary and aggravated home burglary, as we have previously discussed. Yes, we have drawn the line at the threshold to people’s homes in the context that when people are in their homes, they should feel safe and secure and should not be subjected to one of these terrible crimes. For those offences, we are prescribing a mandatory minimum penalty for serious violent and sexual offences that occur in the course of aggravated home burglary in the boundaries of a person’s home. However, the maximum for all these penalties remains the same as those in the Criminal Code currently. The judiciary can sentence up to the maximum, as it has been. The maximum penalty for the offence of aggravated burglary remains at 20 years’ imprisonment. We are redefining the mandatory minimum penalties for violent and sexual offences that occur within the threshold of a home as part of aggravated home burglary.

Mrs M.H. ROBERTS: Perhaps the minister can clarify this point for me. A number of women in my electorate run businesses in buildings that were formerly homes, some of which are on main roads in my electorate. I have been to a lot of these places to chat with people. The homes are used for a variety of businesses; some are consulting rooms, for example. In some circumstances these former homes are used as beauty salons, massage places, acupuncture places and places that offer other personal services. There are also various therapists that operate out of what was formerly a house in which people used to live. Most of these places still have a kitchen; indeed, in many circumstances the whole form of the house remains, but it is no longer a primary place of residence. I would have thought that those people could expect a similar right at such a place in the same way that people have rights in the place at which they sleep at night. If minimum mandatory terms are so good and effective for one circumstance, why is the government denying people in other circumstances when, effectively, the same punishment is meted out when the offence occurs in a private place that has the same structure as a house and that in most instances was used as a place for families to live in, but is now used by a sole operator to operate a business? Am I now to believe that if a bed in a sleep-out in the back of the premises is used to sleep in occasionally, that fits the definition, but if it is not used, it will not meet the definition? Is the definition broad enough to cover those premises? Perhaps the minister can explain why the offence should not be the main factor, as it has previously been the law. Why is the main factor now not the actions and content of what occurred, be they theft, assault, rape or whatever, and the trauma suffered by the victim, rather than whether the offence occurred in a place with a couple of beds in which people normally sleep or another private place that is a place of sanctuary for an individual that happens to be used for a purpose other than being a principal place of residence?

Mrs L.M. HARVEY: The maximum penalty for sexual assault can be up to 20 years’ imprisonment. We are not proposing to change that. For the purposes of the Criminal Law Amendment (Home Burglary and Other Offences) Bill, the definition of a “dwelling” or a “home” is a place that is ordinarily used for habitation. If a house has been converted to a business and the —

Mrs M.H. Roberts: It is not that a house has been turned into a business; it is that a house is being used for a business.

Mrs L.M. HARVEY: If a house is being used for a business and no-one uses that house for habitation, the person will not be captured by the mandatory minimum penalty for these offences. However, the maximum penalties will still apply.

Debate adjourned, on motion by **Mr J.H.D. Day (Leader of the House.)**

Extract from *Hansard*

[ASSEMBLY — Tuesday, 17 March 2015]

p1463c-1478a

Mr John Quigley; Mrs Liza Harvey; Acting Speaker; Mr Paul Papalia; Dr Tony Buti

Sitting suspended from 6.00 to 7.00 pm