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

Consideration in Detail

Resumed from 18 March.

Clause 15: Section 326 amended —

Debate was adjourned after the clause had been partly considered.

Mr D.A. TEMPLEMAN: I have listened with interest to the debate and the examples that the member for Butler has given of specific cases. The minister has remained silent on some of them, and has made comment on some of them. When we debated this bill yesterday, it became apparent that the minister was not responding to some of the concerns raised by the member for Butler in specific examples. Although the minister may not see the urgency or the need to respond to specific examples, the opposition does, because, ultimately, we want to make good laws in this place. We want to make laws that are workable and responsive to the modern era and the concerns of our communities. I hope that as we move through these examples, rather than the minister responding in a blank manner, we receive from her—as she has the expertise at the table with her—some genuine responses to the issues and examples that the member for Butler highlights. I am no legal mind; I have never professed to be and most members know that. However, I think it is important that when particular examples of cases are raised, we get a response from the minister and that what we are proposing here in legislation is reflected in that response, and also in precedents. From my understanding of the law, precedent is very much a part of how our law is interpreted, with interesting cases always being cited. With those comments, and a significant contribution to this debate from myself, I am sure the member for Butler has further questions on clause 15.

Mr J.R. QUIGLEY: Having regathered my thoughts overnight, before I turn to section 9AA of the Sentencing Act and the policy considerations behind it, I go to the cases that are cited. The judges, in striking the sentences in the three cases the minister cited—Thorn, Ugle and Miller—were operating within a regime under which they had to give recognition to a plea of guilty. Although the minister and I agree that it was not by reason of section 9AA, it was, nonetheless, a requirement of the court to give recognition to the plea of guilty. We both agree on that—is that fair?

Mrs L.M. Harvey: Yes.

Mr J.R. QUIGLEY: The minister agrees. We have dealt with the case of Thorn, and I think the minister has graciously acknowledged, at least from Their Honours' point of view, that it was not judicial inadequacy in performance in relation to Thorn, but that the sentence they struck was within the range of the penalties then prescribed by the legislation's 20-years transitional provision, less a third, as Her Honour pointed out at paragraph 42. To clarify it, it is not a criticism that the minister is making of Their Honours for not doing their job right, as I understand, in Thorn's case, but, rather, looking at the state of the legislation and saying that the government has made a policy decision to introduce this bill. Is that a fair summation?

Mrs L.M. HARVEY: Indeed, member for Butler. The member makes a valid point. As I have said to the member, when I go to community forums and I get feedback from the community that it is not satisfied with the sentencing that comes out of the court, my response to the community is not to inappropriately criticise the individual decisions of those judges and magistrates as they try to execute their duties. I believe, and I think the member will agree with me, that our responsibility as legislators is to free up and change the framework within which they operate if we are not satisfied with the outcomes that they are achieving and the sentencing outcomes as a result of these convictions. I think we are both in agreement on that. The intention of this legislation was never designed to be a slap down to the judiciary or even a criticism of the job that the judges do—I am sure that their job is executed in quite difficult circumstances. Notwithstanding that, when there is dissatisfaction from the community with the outcomes that the judiciary is delivering, it is incumbent on us as a government to look at the framework within which they operate and adjust that legislation accordingly through the Parliament, which is why this amending legislation is before the Parliament now.

Mr J.R. QUIGLEY: I now turn to the second of the three cases the minister cited—that is, the case of Miller. In this case, the Court of Appeal comprised the President of the Court of Appeal, as he then was, Mr Justice Steytler, QC; and the coram included the now-retired Mr Len Roberts-Smith, QC, and the present President of the Court of Appeal, Her Honour Justice McLure. The minister said in her second reading speech that that judgement did not reflect community expectations, but I ask the minister to acknowledge that to a very large degree the judge's hands were tied by the complex legislation delivered from this Parliament. I turn to paragraph 29 of the judgement, which states —

> I would consequently allow the appeal and quash the sentences imposed by the sentencing Judge. Were it not for the provisions of the *Sentencing Legislation Amendment and Repeal Act* to which I have earlier referred, I would have substituted, for the sentences imposed …

That is, he would have substituted greater sentences, were it not for the fact that his hands were tied by the command of this Parliament. This is not a criticism of the judiciary, but rather of the legislation that the judiciary was then operating under. Is that a fair way to put it?

Mrs L.M. HARVEY: Member for Butler, paragraph 29 of the judgement states —

> I would consequently allow the appeal and quash the sentences imposed by the sentencing Judge. Were it not for the provisions of the *Sentencing Legislation Amendment and Repeal Act* to which I have earlier referred, I would have substituted for the sentences imposed, sentences of 6 years' imprisonment for the aggravated burglary, 7 years' imprisonment for the sexual penetration —

There was cunnilingus, and there was also penile penetration —

> … 2 years' imprisonment for the indecent dealing and 8 years' imprisonment for the penile penetration.

The judge is saying that he would have imposed seven years' imprisonment for the first sexual offence, eight years' imprisonment for the second sexual offence and six years' imprisonment for the aggravated burglary, but he was constrained by the Sentencing Legislation Amendment and Repeal Act. Therefore, notwithstanding that a maximum penalty of 20 years was available for those sexual offences, the judge made it clear that he felt constrained by the Sentencing Legislation Amendment and Repeal Act and obviously other precedent.

Mr J.R. QUIGLEY: The judgement goes on to state —

> Because of the one-third reduction mandated by the legislative command …

So he is saying what the Court of Appeal had said earlier in the case of Thorn in 2008—that is, four years earlier—that although the maximum penalty is 20 years, because of the one-third reduction mandated by the legislative command, those sentences must be reduced, and he is commanded to start at 13 years and four months. Does the minister see what I am saying? That is what we were talking about yesterday. What we are delivering down the Terrace is very difficult, and beyond, I would suggest, the comprehension of our average constituent. If a member of the public were to read this debate, they might go to Google and call up www.slp.wa.gov.au, which would take them to the State Law Publisher, hit "Acts in Force", go to section 326 of the Criminal Code, which is the section that we are amending, and see the 20-year maximum to which the minister has referred, not appreciating that when we apply the other laws that this Parliament has made—that is, the Sentencing Act 1995 and the transitional provisions referred to by the court in 2008—that the maximum is not really 20 years; it is 13 years and four months. Does the minister appreciate what I am saying there? The minister agrees. The starting point is 13 years and four months, and the court in this case would have increased the penalty to seven years' imprisonment for the sexual penetration and eight years for the penile penetration. The judgement goes on to state —

> I would also order that the sentences imposed in respect of counts 2, 3 and 4 should be served concurrently with each other and partly concurrently with that imposed on count 1, to the extent that those sentences should be taken to have commenced on 18 September 2004, 8 months after the commencement of the sentence imposed in respect of count 1. That would give rise to a total sentence of 6 years' imprisonment …

So, the judge is saying that he is stuck with this sentence, but he would have increased it significantly by making count 1 cumulative with count 5, which would have meant that there would have been a significant increase in the penalty and it would have been brought back into the seven and a half to eight-year category. I go also to the case of Thorn, which was also, I believe, seven and a half years, and if we add back the discounted 25 per cent, that would take it to about 10 years, from my recollection, as we calculated yesterday. Does the minister remember that?

Mrs L.M. Harvey: Yes.

Mr J.R. QUIGLEY: So, it cannot be criticism of the court that we are making here today. Is that a fair comment?

Mrs L.M. HARVEY: As I said, member for Butler, the whole purpose of bringing in this amendment is that our role as legislators is to change the framework if we are not happy with how it is operating. The mandatory minimum penalty for this type of offending, once our legislation goes through, will be 15 years, which I think, and certainly the community has endorsed, is a more appropriate sentence. That will clear up some of the

anomalous considerations that existed at the time, because the minimum penalty for that offence will be 15 years, up to a maximum of 20 years.

Mr J.R. QUIGLEY: The Court of Appeal has said repeatedly since 2008 that having regard to community concerns about the prevalence of aggravated home burglary, it will stiffen its sentences. We can see from the Director of Public Prosecutions database—which, as the minister knows, I have printed out, and I do not want to go through all those cases—that there has been a stiffening of sentences. I want to take the minister now to the third case, and that is the case of Ugle. When I say the third case, it is the third case to which the minister referred in the second reading speech. I am going to fall into the minister's trap of saying that the case of Ugle is the worst case. However, there is always another case that we can say is the worst case. Evilness seems to have no bounds, and people seem to get worse and worse and worse. I go to the case of Ugle, which was the invasion of the home of an elderly woman who was 78 years of age. I have earlier detailed the facts in *Hansard* and need not go to the facts again, but it involved repeated acts of the worst sort of sexual assault in which she thought she would choke. She thought she would die. In that case, the judge struck a sentence—I think this goes to the next issue I wish to raise, which is section 9AA of the Sentencing Act—of 11 years, and the minister said in her second reading speech that this clearly does not reflect community expectation. Does the minister recall that?

Mrs L.M. Harvey: Yes.

Mr J.R. QUIGLEY: The minister agrees, for the record. We do not want the minister to get up and down all morning. If the minister does not mind, I will just say that the minister agrees and the minister can disagree if I am putting it wrongly. The minister from her seat agrees. The judge struck a penalty of 11 years and the minister has already agreed that the sentencing judge had to recognise the plea of guilty, and he did. By my reckoning, 11 years—I should not say this, but I did this over a glass of port in front of the TV, so I hope I have the numbers right—is 132 months.

Mrs L.M. Harvey: By interjection, I think if we look at the judgement, we see that because those pleas of guilty were not made at the earliest possible point, it was less of a factor when considering this sentence.

Mr J.R. QUIGLEY: Correct, but there were a couple of other factors, including some mental impairment, that he took into account together with the plea of guilty. At that time, as the minister rightly pointed out, the Attorney General said when he brought in the amending legislation that the plea of guilty could attract a discount of between 22 and 33 per cent. The judge said that he did not give it full weight because it was late —

Mr P. PAPALIA: I am sure the member for Butler is right on the cusp of making a very important point and I would like to hear it.

Mr J.R. QUIGLEY: The Court of Appeal said on appeal that it would not have given him more than the discount that he got. If the starting point is 11 years, 132 months, and that represents 75 per cent of the head sentence, we add back in one-third of that, being 25 per cent, and the 132 months becomes 176 months. Therefore, the head sentence before discount would have been 14 years and eight months. The totality of the sentence would have been 14 years and eight months. Under the new legislation the judge is required by law to state the full reasons for giving the discount and how much the discount is. It is not set out chapter and verse in here. He said that he has taken into account the personal circumstances of the accused before him and here is the sentence. One has to retro-build the head sentence. If one builds back in the 25 per cent discount, it comes to 14 years and eight months. Under the new legislation it will be the full 15 years because there will be no section 9AA discount applied. The point I am making is that in striking this sentence, firstly, at first instance, Judge O'Neal of the District Court and then subsequently the justices of the Court of Appeal were diligently discharging their duty under the law as it then stood. Would the minister agree with that? If the 25 per cent discount did not apply, the sentence would have been 14 years and eight months.

Mrs L.M. HARVEY: I refer to the sentences imposed in that case —

> Count 1: aggravated burglary 2 years' imprisonment;
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> Count 2: aggravated assault occasioning bodily harm 3 years' imprisonment;

For the six counts of sexual assault of various kinds he received five years, four years, six years, four years and six years' imprisonment. Obviously, protocols, precedents and other considerations are taken into consideration when deciding whether those terms would be served concurrently or consecutively.

Mr J.R. Quigley interjected.

Mrs L.M. HARVEY: That is right. As the member for Butler said, all those considerations in this matter resulted in 11 years' imprisonment for those eight offences of which the offender was convicted. As I said earlier, clearly, we think that should be higher, which is why we are amending this legislation to make it really clear for the judiciary that the mandatory minimum penalty for those offences after this legislation goes through will be 15 years, and there is no grey area about that. We make it really clear: the mandatory minimum will be

15 years up to a maximum of 20 years for those offences. This does make it really clear for the judiciary and it cleans up that environment in which they have been operating that has them arrive at these sentences. If you like, we are freeing up the constraints, I put to the member for Butler, in bringing forward this legislation and providing some clarity.

Mr J.R. QUIGLEY: Sure. I think I understand what the minister is saying, but for the benefit of the public reading this transcript, when the minister said that there is all those counts, many of those counts would attract a 15-year mandatory minimum.

Mrs L.M. Harvey: Indeed, yes.

Mr J.R. QUIGLEY: But they would not be served cumulatively.

Mrs L.M. Harvey: The bill does not propose to alter that.

Mr J.R. QUIGLEY: If they were cumulative and the total sentence went beyond 15 years, the danger, as identified by the former Commissioner of Police of Queensland when Queensland was bringing in these massive mandatory terms, is that the offender might be encouraged to murder the victim, who is the only witness, because he will get no more for murder than he would if the sentences were cumulative. Does the minister see what I mean? If we added up the sentences as the minister went through them, we would find that they added up to 30 or 40 years. Therefore, if it were cumulative, the person would say, "I may as well strangle her because there will not be a witness left behind." The danger of expanding the sentences for murder too far is best illustrated as a real possibility in the tragic case of Daniel Morcombe. Those brave and skilful Western Australian police officers wore taped microphones and recorded Daniel Morcombe's murderer saying that he did not pick up Daniel with the intention of killing him.

He said he intended picking him up for the purposes of—in inverted commas—"fun", as perverted as that might sound. Cowan drove Daniel to some place to have his awful fun, but when Daniel panicked, arced up and resisted, he realised that if Daniel got away he would be in big trouble so it was better to murder him, because Daniel was the only witness. When the minister reads 15 years, 15 years and 15 years for all these offences, the minister is not expecting the court to impose all those cumulatively, is she?

Mrs L.M. HARVEY: Member for Butler, the Daniel Morcombe case is very interesting, and I am very proud of our Western Australian police officers who were involved in finding his killer.

Mr J.R. Quigley: And rightly so.

Mrs L.M. HARVEY: They did a fantastic job under very difficult circumstances, and we, as a community, should be very proud of their work, particularly in that case and many others that are currently in train. We come to that point of trying to understand how much of a deterrent effect legislation has and really how much rational thought is going through the minds of the perpetrators when they are in the act of committing these violent physical and sexual offences. As to whether they would be thinking through the consequences at the time, that is one of those questions that I am sure the prison psychologists can ponder at length to try to determine. As to ratcheting up the severity of their offence at the time of offending, there is still the option of life imprisonment available for murder. Also, under the Sentencing Act we have life imprisonment for murder, and the court can impose an order that the offender must never be released, and the court can actually impose a sentence of the natural life —

Mr J.R. Quigley: For murder?

Mrs L.M. HARVEY: For murder.

Mr J.R. Quigley: But not for offences under section 326?

Mrs L.M. HARVEY: No, for murder. In those circumstances, should the scale of the crime escalate to the point at which a murder charge could be successfully prosecuted and the offender convicted of that offence, very severe and quite strong options are available to the court. But as the member for Butler says, for clause 15—proposed amended section 326—we are not proposing to adjust the maximum sentence available for this offence. The maximum sentence will remain at 20 years' imprisonment but, as I have discussed previously, we are setting the mandatory minimum penalty at 15 years for that offence.

Mr J.R. QUIGLEY: So in a case such as Ugle, if a penalty of 15 years were inflicted, that would not offend the minister or her constituents?

Mrs L.M. Harvey: I would prefer a longer sentence, but 15 years as a minimum is definitely better than the 11 years that he was sentenced to.

Mr J.R. QUIGLEY: That is what I was getting to. The 11 years, if we built back in the discount that has now been taken away, comes to 14 years and eight months. It would be very hard to criticise the judges—I do not

want to quibble on this; I want to get on—if the starting point was 14 years and eight months and not 15 years. We would not criticise them over that, would we?

Mrs L.M. HARVEY: No. Member, in that circumstance —

Mr J.R. Quigley: I think the minister said "No" as she rose.

Mrs L.M. HARVEY: Had our legislation been in place at the sentencing of Ugle, using the logic of the judge at that time, we would be likely looking at a 15-year mandated minimum for the sexual offences, which would likely be served concurrently. But in addition to that, the court can impose an additional three years for aggravated assault occasioning bodily harm, and an additional two years for the aggravated home burglary. Theoretically, he could have been sentenced to 20 years.

Mr J.R. Quigley: He could have been sentenced?

Mrs L.M. HARVEY: Yes.

Mr J.R. Quigley: Theoretically?

Mrs L.M. HARVEY: Yes, but 15 years would be the minimum under our legislation.

Mr J.R. QUIGLEY: I was making the point in defence of the judiciary that if the starting point before they had to apply the discount was 14 years and eight months, not 15 years, that would hardly be a circumstance of having to criticise the judiciary.

Mrs L.M. Harvey: Indeed.

Mr J.R. QUIGLEY: I thank the minister. I can move on from those three cases then. I want to get back to section 9AA of the Sentencing Act again, because —

Mrs L.M. Harvey: And its interaction with this legislation, member for Butler?

Mr J.R. QUIGLEY: Correct. Well, it is not interaction; this legislation negates section 9AA for the sentences set out in this bill.

Mrs L.M. Harvey: Yes, it does.

Mr J.R. QUIGLEY: The minister knows my concerns, because I expressed them yesterday, from the victim's point of view that when the honourable Attorney General introduced that bill, he was talking of not only the utilitarian advantage of having people plead guilty and saving the court's time, the police's time and Director of Public Prosecutions' time, but also relieving the victim of the daunting prospect, as the Attorney General said, of having to be cross-examined in public. It is also daunting for defence counsel and the counsel at the bar table, too. I have participated in those sorts of trials and found them very stressful as a barrister; I am sure any legal counsel involved in those trials, seeing what witnesses go through, find it enormously stressful and disturbing.

By the bye, I can remember one case that did not involve aggravated home burglary but involved repeated counts of paedophilia at what was the Riverside Hotel–Motel, upon which site now stands the Mount Hospital. The offence was committed by the maître d' of the dining room, who lived on premises. I can remember that the witnesses were all able to describe that when they went to his room with him, he had cocktail cigarettes—I have not seen them in years. I do not know whether the minister ever saw them, but the cigarettes were pastel colours, such as pinks, aquas and yellows. There is probably no-one old enough in the chamber to remember these. I forget what brand they were, but they came in a black flip-top packet and there were all different pastel cigarettes in there. These young witnesses described how they recalled, during the commission of the offence, observing these coloured cigarettes on the bedside table. That sent a shiver through me halfway through the trial, because we had a little family tradition. The Riverside Motel, in those days, next to the Adelphi Hotel, was one of the places to go to for dinner. My late mother and my late father would always take us there on their respective birthdays for a family dinner. I could recall that the maître d' of that dining room was always behind the bar smoking pastel cigarettes. During the trial, suddenly the ring of truth hit me like a steam train when that was described, but I was already in trial at that point. By that night—I have had one since—I broke out in a nervous cold sore that started to bleed, and for the rest of the trial it would not clean up, although it did clean up after the trial. I am just describing the stress of counsel, let alone that of the witness. The man then lodged an appeal that went forward and, blow me down, during the appeal, I had a recurrence of the same outbreak through the stress; and I have never had a repeat since.

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

The ACTING SPEAKER (Mr N.W. Morton): Member for Butler, I will give you the call but can we just keep our comments to clause 15. I have heard about cigarette packets, pastel colours and dining rooms, but can we just bring the debate back to the clause at hand, please?

Mr J.R. QUIGLEY: Sure, Mr Acting Speaker. The point is that I am going to my experience of the stress of counsel involved in a matter such as this, and I am not the victim; I am just the person at the bar table. The point I want to make is that this was the stress it was having upon me as counsel. The stress for the victims who had to give evidence would have been immeasurably more because they were reliving the worst experience of their life. The words "notwithstanding any other written law" in clause 15(2) to insert proposed section 326(2) of the Criminal Code will negate section 9AA of the Sentencing Act, and I want to ask the minister a question on behalf of the victims. The minister has already said that a policy call has been made; is that correct?

Mrs L.M. Harvey: Correct.

Mr J.R. QUIGLEY: It was a policy call to take out section 9AA of the Sentencing Act. That policy call to negate section 9AA was made soon after Hon Attorney General said what he said in introducing section 9AA. I will return to *Hansard*, if I may. This is the last topic in this part of the bill, as far as I am concerned, and we can then move on. I tell that to the Acting Speaker so that he will know that this will not go on forever. The Attorney General said —

> The government recognises that some credit should be given for a plea of guilty for essentially utilitarian reasons, against a background of the presumption of innocence and the entitlement of an accused to have the prosecution prove its case against him or her beyond reasonable doubt. A plea of guilty saves the state the cost, the expenditure of resources and the uncertainty of a trial, possibly a lengthy one. It saves witnesses the inconvenience and expense of having to put aside their daily routines and attend court, and often the stress of giving evidence. In the case of witnesses to traumatic events, or witnesses who are also victims of crime, it also relieves them of the trauma of remembering and recounting their experience, often a considerable time after the event. Those who have not had to do so may not readily appreciate it but, for the majority of people who happen to be witnesses necessary to prove a case, the idea of attending court and giving evidence—even uncontroversial evidence—and being exposed to cross-examination testing their recollections, and perhaps calling into question their veracity and character, is a daunting prospect.

In reversing that policy in this part of the bill—is that what it does?

Mrs L.M. Harvey: The member can get to the end of his speech and I will stand and have something to say.

Mr J.R. QUIGLEY: Did the government invite submissions from victims' groups or victims or the Commissioner for Victims of Crime in reversing that policy and deciding that section 9AA of the Sentencing Act would no longer be operative and would entice people to plead guilty? Was there consultation with victims or victims' groups; and, if there was consultation, which groups were consulted and what did they have to say; or was it just a policy decision?

Mrs L.M. HARVEY: Member for Butler, it was a policy decision. It was a highly publicised policy that was put out to the community and discussed and canvassed among many sectors at the time we proposed it.

Mr J.R. Quigley: That was the direction?

Mrs L.M. HARVEY: It is not a reversal of section 9AA of the Sentencing Act. Section 9AA does not apply to mandatory penalties as a rule. We are not proposing to adjust the way in which section 9AA of the Sentencing Act applies in these circumstances. With respect to victims, it is important to note that early pleas of guilty are not necessarily the norm in these circumstances. Court is a very distressing environment for all people involved, including the victims who may or may not be required as witnesses in the court process. However, some victims who are able to tell their story in the court environment by expressing in their own words the events that have happened to them find it a somewhat cathartic experience and it does help them find some closure and move on. I agree with the member that generally courts are very distressing places. I know quite a few people who work in advocacy in the courts who support witnesses through a range of different trials, and that support network is there, as well as our Commissioner for Victims of Crime, Jennifer Hoffman, to help victims through that court process so that they get the best outcome. However, this amending legislation does not alter the way section 9AA of the Sentencing Act applies currently to mandatory penalties.

Mr J.R. QUIGLEY: Just to be clear, I did not say that this legislation reverses section 9AA of the Sentencing Act. I said that the effect of the bill before the chamber seems to reverse the policy consideration behind section 9AA. Section 9AA still stands, but the courts now will have no regard to section 9AA when striking these mandatory sentences; is that correct?

Mrs L.M. HARVEY: The member for Butler is correct. Offenders charged with these violent physical and sexual offences in the course of an aggravated home burglary will not be afforded the provisions of section 9AA to allow them a discount for an early guilty plea. Offenders committing these acts of physical violence and

sexual violence in the course of an aggravated home burglary will not be eligible for a discount of their mandatory minimum sentence for an early guilty plea.

Mr J.R. QUIGLEY: The policy behind section 9AA of the Sentencing Act was enunciated by Hon Attorney General when he second read the bill, and nowhere in there was there a reward for the prisoner. The section was put in there out of consideration for those affected by the crime; notably the police, who have to spend so much money prosecuting the crime, the courts—yadda yadda yadda—and most importantly the victim. The Attorney General is therefore saying that the policy is not to say, "Good boy, you pleaded guilty." The policy of section 9AA was to protect the victim from the daunting prospect—number one—and other policy considerations were savings to the community and not a reward to the offender. I think the minister has answered my question. The policy decision that section 9AA of the Sentencing Act should not apply to these mandatory terms was not arrived at after consultation with victims but, really, it was a policy decision for the infliction of mandatory terms.

Mrs L.M. HARVEY: The member is right. That was a policy decision of the government; it was the government's call. The review provisions are written into this legislation. When this legislation comes into effect, these offences for aggravated home burglary will be separated and we can look for any trends. I might also add that a very small number of people commit these violent, physical and sexual offences while carrying out an aggravated home burglary. Establishing a trend line with them would be difficult but the review provisions will ensure that there are no unintended consequences for victims or the community as a result of this legislation, and they will assess any unintended consequences.

Mr J.R. QUIGLEY: My concern, once again, is that at the time the policy was announced—February 2013, during the election campaign—I had not heard of it before then. Is that correct?

Mrs L.M. Harvey: That was when it was first publicly announced, yes.

Mr J.R. QUIGLEY: Then it was covered in the leadership debate. There was no mention that section 9AA would no longer be operative for the benefit of victims. I am just wondering when the decision was taken to negate the provisions of section 9AA for the benefit of victims.

Mrs L.M. HARVEY: As the member alluded to previously, various pieces of legislation, including the Criminal Code, the Sentencing Act and the Criminal Law (Mentally Impaired Accused) Act cross-reference each other. The member is quite right; we did not specifically mention any elements of the legislation as part of those announcements. As the member previously alluded to, the complexities of the interaction of the system are beyond the remit of most people in the community, so we did not mention the technicalities of how we were going to achieve this legislation; we just put our policy intent to the community. We put out quite a detailed media statement referring to the elements that we proposed to push and pursue with this policy. The amendment bill that we have before the house is the outcome of the achievement of that broad policy initiative that was put to the community around mandatory minimum penalties and soon, when we come to division 3, the changes to counting rules for recidivist home burglars.

Clause put and passed.

Clauses 16 to 18 put and passed.

Clause 19: Section 400 amended —

Mr J.R. QUIGLEY: Clause 19 is the operation clause. The minister said that she is waiting for the information technology section of Western Australia Police to be able to identify the counting for these clauses. Is that correct?

Mrs L.M. HARVEY: Perhaps I can clarify. In clause 19(1) we are defining the commencement date for the legislation because it will not be retrospective. The commencement date means the day on which the Criminal Law (Home Burglary and Other Offences) Act 2014 comes into operation. From that point, the new counting rules for recidivist home burglars will apply.

Clause put and passed.

Clause 20: Sections 401A and 401B inserted —

Mr P. PAPALIA: I want to address proposed new section 401A(2)(a), which is set out on page 22 of the bill. The minister would be aware—I raised it in my second reading contribution—that Amnesty International, in particular, is concerned about this particular proposed subsection, which states —

> (2) In this section —
>
> (a) a conviction includes a finding or admission of guilt that leads to a punishment being imposed on, or an order being made in respect of, the person, whether or not a conviction was recorded;

Amnesty International's concerns specifically focus on juveniles and the likelihood that this proposed subsection would mean that were a juvenile to admit guilt in order to be referred to a juvenile justice team, that plea would appear, within the definition laid out before us, to be a "strike" for the purposes of the bill. Amnesty International also indicated that it is concerned that a similar admission of guilt is required in the event of a court being adjourned so that a court conference can take place for a juvenile and that the young person is then able to return to court for sentencing after a court conference. In those two instances, can the minister indicate whether this change is counted as a strike? Juveniles are admitting guilt in order to be referred to a juvenile justice team or to be engaged in a court conference.

Mrs L.M. HARVEY: I thank the member for the opportunity to clarify this issue. As the member said, the proposed subsection states —

> a conviction includes a finding or admission of guilt that leads to a punishment being imposed on, or an order being made in respect of, the person, whether or not a conviction was recorded;

Diversionary tactics, such as diversions to a juvenile justice team, police cautions et cetera will not count as strikes for young offenders. The current diversionary options available through the Young Offenders Act are not being altered by this legislation either. If the punishment that is being imposed leads to a term of detention or imprisonment, that would be counted as a strike, not the diversionary tactics or police orders or referrals to a juvenile justice team.

Mr P. PAPALIA: To be very clear, are the only instances under this clause that juveniles would be subject to consideration of whether they had committed a strike is in the event that they receive a sentence to juvenile detention? I assume there are other punishments that might be meted out to juveniles short of juvenile detention that might be deemed punishment, but the minister said that they do not count as a strike. The minister said that the only time a strike would be recorded in accordance with this legislation is in the event of a juvenile being sentenced to detention in a juvenile detention facility.

Mrs L.M. HARVEY: Division 2 of the Young Offenders Act is entitled "No punishment and no conditions" and includes a range of options. The court may refrain from punishing in some cases. The court may refrain from imposing any punishment if it is satisfied that the offender might, for example, be put into the care of a responsible adult. Division 4 is "No punishment but security or recognisance" whereby the offender can be put on a good behaviour bond and those sorts of conditions. Division 5 lists other forms of punishment, such as the imposition of a fine instead of imprisonment. Obviously, to impose a fine, the offender has to be able to pay. A youth community-based order will be counted as a strike, but a diversionary tactic, such as a referral to a juvenile justice team or a police order, falls under a different remit under the Young Offenders Act and is not considered a conviction that results in a punishment.

Mr P. PAPALIA: Thank you, minister, because that is Amnesty International Australia's and my concern. Clearly, punishments are available to the courts for juveniles, short of juvenile detention, that I would hope have the intention of having some diversionary aspect to them. They fall short of juvenile detention with the intent that they correct inappropriate behaviour. It may be a community correction order of some description that falls short of juvenile detention and requires the individual in the community to repay a bond or a fine, as the minister indicated. Why does the minister view those punishments as not having the potential to divert an individual from their inappropriate behaviour? If the minister does not believe that is the case, why do we have that particular type of punishment available to the court for juveniles? I would have thought that those types of punishments are just as reasonable as some of the other diversion programs the minister referred to. Is the minister suggesting that the only type of diversion program counted as a diversion for the purpose of this bill is something that the Minister for Corrective Services has created under his recent program? There is a full suite of responses to juvenile offending short of juvenile detention. Under this government, the suite is a lot smaller than it was. The government has created a big gap at the high end of offending. The government removed the key element within that suite that focused on the high end of offending.

The ACTING SPEAKER (Mr I.M. Britza): Member, acknowledge the Chair as you are passing through, please.

Mr J.R. Quigley: Sorry.

Mr P. PAPALIA: This is at the heart of the concerns held by a number of people, not just Amnesty, by the way. Amnesty has been active in this area and regrets that it was not able to release its study on the impact of juvenile detention in Western Australia on Indigenous juveniles in particular, which it was going to release in June, prior to this legislation being brought on. Putting that aside, Amnesty and the Aboriginal Legal Service of Western Australia have concerns. People at the coalface dealing with the disproportionate number of Indigenous juveniles in our detention system, and subsequently the number of Aboriginal adults in our system, have concerns that this legislation is likely to increase the number of Aboriginal juveniles in the detention system. If a strike is counted when an individual gets a fine or an alternative punishment to those that this legislation

excludes—I am not too sure about the ones the legislation excludes at this stage—that will have a significant impact on the rate of incarceration of these individuals. I have a different approach, and I will talk about that in a bit. I have an option for the minister. But right now I think the minister is setting us up for a massive increase in the juvenile detention population at the expense of missed diversionary opportunities, because the minister is defining some forms of admission of guilt, by necessity, as a strike under these rules. That might actually drive more individuals to the detention system earlier than they might otherwise be driven, depriving them of exposure to a potentially successful diversion program. I think that is a concern.

Ms S.F. McGURK: I am quite interested in what the member for Warnbro is saying.

Mr P. PAPALIA: Thanks. I was just about to sit down.

Can the minister define the types of penalties that are counted as a strike and the ones that are not, under these proposed subsections?

Mrs L.M. HARVEY: I thank the member for Warnbro for his comments. The government is focused on the area of Aboriginal youth crime. The Minister for Corrective Services recently made an announcement about our Youth Justice Innovation Fund that is specifically designed to deal with offenders and reduce re-offending of that particular demographic. This legislation applies only to 16 and 17-year-olds under the Young Offenders Act. We are removing from the legislation youth who have reached the age of 16 years but who have not yet reached the age of 18 years, so it applies to 16 and 17-year-olds. The diversionary options under the Young Offenders Act are still available to courts for those youths, and the diversionary options will not be counted as strikes. Once a youth community-based order is deemed a punishment under division 6, section 73 of the Young Offenders Act, a youth community-based order would count as a strike. However, the court can impose diversionary options and conditions that require a young offender to participate in certain undertakings that are covered in the Young Offenders Act under sections 66, 67(1)(a), and 69, and the options include a referral to a juvenile justice team and police cautions. None of those options would be counted as a strike, even for 16 and 17-year-olds who fall within the remit of the new counting rules. There is a range of options that we are not adjusting under the Young Offenders Act. I previously mentioned that a review of the Young Offenders Act is currently in train. When juvenile offenders get to the point at which they have punishment options that count as strikes—for example, they could have two youth community-based orders—for the purposes of this legislation, once they get to their third appearance in court and a third conviction is recorded, those two youth community-based orders count as strikes 1 and 2, depending on when they occurred. Young offenders still get the option to have every offence up until their first court appearance counted as one strike, and subsequent court appearances for home burglary will count as strikes 2 and 3 should the court deem a punishment is required in those circumstances.

Mr P. PAPALIA: Effectively, the minister is removing community orders for juveniles from the suite of acceptable diversionary tactics available to the courts and suggesting that under this legislation it is just counted as a punishment and therefore a strike. The minister is removing those orders for 16 to 17-year-old juveniles because there are other diversionary alternatives. The minister is saying that she does not want the courts to view a community order as a diversionary alternative because that will automatically become a strike. From my understanding of what the minister is saying, this will drive the courts towards this activity from their suite of options whether or not she wants that to happen —

Mrs L.M. Harvey: No, member. Youth community-based orders are currently counted as strikes, and we are not changing that because they fall under division 6 of the Young Offenders Act.

Mr P. PAPALIA: So, will this proposed subsection not impact on the current situation with regard to the three-strikes legislation?

Mrs L.M. HARVEY: No, because it is the same as that which currently stands under section 400(4)(a) and (b) of the Criminal Code. There will be no change to when a finding of admission or guilt leads to a punishment being imposed on the offender.

Mr P. PAPALIA: I assume that means that the additional 60 juveniles whom the minister conservatively predicts will be added to the juvenile detention muster as a consequence of this legislation will be attributed to the introduction of the three-strikes mandatory component; it has nothing to do with anything else. I am interested to know the driver for this, and whether it has anything to do with what we have not potentially isolated as a cause. That seems to be a significant impact. I do not know the figure for today's juvenile muster—I assume it is around 130 or 140—but the minister is talking about a 50 per cent increase over three years. I wonder what the minister's research indicates is the driver for this potentially huge increase in juvenile detention as a consequence of introducing this law.

Mrs L.M. HARVEY: The increase in the muster will come from the change in the counting laws for the 16 and 17-year-olds captured by this amendment. If the offender was under the age of 16 years when the offence was committed, the current counting rules apply, so there is no change and the bill has no effect. If the juvenile offender is aged between 16 and 18 years when the offence was committed, the conviction will be regarded as

a strike if it is their first home burglary or if, at the time of the home burglary, the offender already has a conviction for a previous home burglary. Effectively juveniles between 16 and 18 years of age will be given a free strike at their first court appearance, and the new counting rules will apply from that point. If the offender is an adult at the time of the offence, any home burglary offence will be reported as a strike and the new counting rules and penalties will apply once this legislation is proclaimed.

Mr P. PAPALIA: I will leave that part of my concern now. The minister has adequately explained things. For the purposes of responding to the concerns of those groups that have contacted me, I hope that the minister has explained the situation.

I turn now to the second reading speech. The minister's contribution to date indicates that not enough juveniles who offend as burglars are being incarcerated, and I will explain why I have made that observation. In the minister's second reading speech, she stated that —

> For 16 and 17-year-olds, the percentage —

This reference is the percentage of youth who actually get a detention order. The minister is referring to a previous paragraph in the speech. It continues —

> is even less—just 25 per cent of offenders aged between 16 and 18 years old convicted of home burglaries or aggravated burglaries received a term of detention or imprisonment in 2012, with an average term of nine months' incarceration.

The natural conclusion from that first statement is that the minister believes that imposing a detention where it has not been imposed to date will be an effective way of correcting this behaviour. Is that correct?

Mrs L.M. HARVEY: As I said in the second reading speech, it is intended that all legislation in this criminal space will have some deterrent effect, and that there be a punishment and a consequence for the action of the offender who has been convicted. Removing prolific priority offenders—where most recidivist home burglars fit—from the community means that we remove the opportunity for them to reoffend. If they spend a period in detention, they can be eligible for some programs under the youth justice innovation fund and in our detention facility to help them develop some skills and potentially correct their behaviour. There is no silver bullet in this space by any stretch. I totally understand the drivers of crime and the reasons these young people end up in the criminal justice system, but if they repeatedly break into people's homes and steal things, there must be a consequence—notwithstanding that the government has a number of projects on the go in that crime prevention space. Once the offenders are in the system or that intervention space that sits around this legislation, we can work to reduce the chances of them reoffending. I am not naive about that. I know where these youth offenders come from and the drivers for their crime; it is all that they have been exposed to. However, if we lined up all these 16 and 17-year-old offenders and asked them whether it is the right or the wrong thing to break into that home, we would probably get the answer that of course it was the wrong thing; they understand that and how there must be a consequence for those actions.

Mr P. Papalia: While the minister is on her feet —

Mrs L.M. HARVEY: I will take an interjection.

Mr P. Papalia: Is the minister essentially saying that for a component of those offenders, her view is that it will be better for them to go to a detention facility because they may be able to access some of these diversionary programs within the detention facility?

Mrs L.M. HARVEY: In some circumstances, yes. Sometimes the only motivator for some of these young offenders to bring them up to age-appropriate numeracy and literacy is incarceration and detention because they are captured by a system that compels them to participate in these programs. If they are roaming the streets and not receiving any consequence for their actions, they will continue to do what they are doing unless something interrupts that cycle. I am not saying that this will work for all of them, but for some of these young offenders, that period of detention may be the only opportunity they have to upskill themselves and potentially find a pathway out of crime.

Mr P. PAPALIA: The problem is that the evidence does not support what the minister just said.

Mrs L.M. Harvey: Not at the moment, it doesn't.

Mr P. PAPALIA: The minister is introducing the law at the moment.

I will explain why I do not like this. I think the minister is going down the path of reducing the options and the likelihood of success that are available to the system in Western Australia. For a number of people—the minister suggested 60 over four years; the President of the Children's Court said 130 in a much shorter time frame, but I will leave that aside, as it is regardless of the number—the minister's policy is to essentially wait until they become bad enough to have offended in such a manner as to fall foul of this legislation and then have them

locked up at a cost to the taxpayer of about $250 000 each a year. I can tell the minister that the percentage of Aboriginal juveniles in our detention facility is between 70 and 80 per cent at any one time and that 80 per cent of the juvenile Aboriginals who go into our juvenile detention facility are recidivist. The rate of recidivism among juvenile Aboriginals who go into Banksia Hill is 80 per cent. Also, once they are an adult, one in three of any juveniles who go into Banksia Hill reoffends in such a way as they are incarcerated in an adult prison. In Western Australia, the recidivism rate among Aboriginal adults is 70 per cent. I say to the minister that by increasing the number of juveniles—make no mistake that they will be predominantly Aboriginal—going into our detention facilities, excluding some options, and I will talk a little about what she might be doing instead, the minister will create a crime university on a really large scale. It will make matters worse. I know it sounds counterintuitive to hear that locking up these people will make them worse, but that view is based on the data that is available to us. Had some real research been done about the likely impact of this legislation on the juvenile offending population, rather than trying to retrospectively make the argument under a slogan around a glib policy at the time of the election campaign, that would have informed the minister of that.

Things can be done and they do not involve waiting until offenders are so bad that they have to be locked up. It involves intervening in an effective fashion before that. Sadly—laughably almost—in 2010, the government removed the one program in the entire state that focused on the top-end juvenile offenders. That program was introduced under the previous Labor government, based on international research that had shown the effectiveness of multi-systemic therapy as an approach to dealing with troublesome individuals, not just troublesome at the low-end rate; it was the only option at the top end for the high-end offenders—those who would go to jail in a minute if they kept on the same path. When the government got rid of it, it was called the family intensive team. When it was introduced, it was called the intensive supervision program. The previous Attorney General—there have been only two, although there have been a lot of other ministers—got rid of that program on the basis of the claim that it was not targeting the right people; it was not getting the right people into the program. But a comprehensive study of that program was done—it had to be extracted through freedom of information after the minister had lost the portfolio—which confirmed that that was not the case. It confirmed that the program needed more resourcing. It needed to be targeted, but options were available to the government that were not used. That is not the only evidence that suggests there is another option.

Ms S.F. McGURK: I am interested in what the member is saying.

Mr P. PAPALIA: Before I talk about what is happening in the United Kingdom, I will talk a little more about the multi-systemic therapy approach and what was called the family intensive team when it was abandoned by this government in 2010. That program was based on multi-systemic therapy developed in the United States as treatment for serious juvenile offenders. The report was compiled by Social Systems and Evaluation at the behest of the current government in June 2009 and was called "Review of Intensive Supervision Program". The background explanation of what multi-systemic therapy is reads —

> MST is an intensive family and community-based approach that seeks to change the behaviour of adolescents and their families, by empowering families to make changes to parent/child relationships, and in addressing problems in home environments. MST incorporates cognitive, behavioural and family therapies. Its strengths-based and family-driven as opposed to therapist-driven.

Essentially, it focused on the dysfunctional family, which was the source of the offending juvenile. The government does not have a similar approach. Five years after the government got rid of the family intensive team, the Minister for Corrective Services is spending a minuscule proportion of the amount of money funded for the family intensive team when it was gotten rid of on outsourcing to a private operator, in one location, to do something similar. There will be no transparency or opportunity for the department or the public to ascertain its degree of success. Like a lot of outsourcing and a lot of privatised attempts in this space, it will be commercial-in-confidence and subject to all the obfuscation and avoidance of transparency that goes with that. It will be impossible for anyone outside an individual watching the contract and the government to determine whether it has been a success. However, a private group, even if it is a not-for-profit company, will have extracted a component of the funding for itself to operate, as opposed to the government operating and continuing with what was a proven, effective response, albeit in need of more resources in 2010 when it was gotten rid of. I will quote from the report I referred to earlier. In my view, the key finding regarding the family intensive team is on page ii of the report and reads —

> There is limited suitable data on which to judge ISP effectiveness, but qualitative information, the literature and MST, Department of Health findings all point to it being an effective program.

The previous Attorney General cut its funding in 2010. The corrective services minister—the police minister rightly referred to it as another option that might be of some help—is implementing a fraction of what we had. The funding is temporary, short term and outsourced. We had an in-house, government-operated, far better funded operation that needed just a bit of robust application on behalf of the government. We could have used

the parental responsibility legislation to ensure that the right individuals and their families were participating in the program, but it was never done. That is a concern.

The member for Maylands has brought to my attention that for some years the United Kingdom has been implementing an updated version of the family intensive team approach called Troubled Families. Again, it focuses on the dysfunctional family home with a view to targeting the top-end offenders. I am told that 110 000 families participated and there were deemed to be successful outcomes for 53 000 or so. I am not sure about that because I have not yet looked at the research that the member has given me to ascertain the degree of accuracy of that successful outcome, how it was measured and how the parameters were defined for determining whether it was a success. The point is that it is nothing new; it is just an iteration of an evolution.

Ms S.F. McGURK: I am still interested in what the member for Warnbro is saying.

Mr P. PAPALIA: It is an evolution of the original concept that utilises the same techniques of going into the family home and, in this case, ensuring that people have a point of contact. If it is like the family intensive team approach—I am assuming it is; I am not as familiar with it as is the member for Maylands—it is a 24/7 response to the problems confronted by these families. That approach, which brings together multiple agencies to focus on the family home of the most serious offending juveniles, is far more effective than any other approach that we have seen. As I have indicated to the minister, it is massively more effective than detention. I concede that there are people who get to such a point in their offending that they should go to prison or to detention. However, I deem it a failure on our collective behalf as a system if offenders are put into detention just for multiple burglaries. I say that because I think there is an option for intervening that has not been employed. I know that the minister will say that the government is working on the Young Offenders Act and there will be all this great stuff in the new Young Offenders Act when it comes in. However, that is irrelevant right now, because the minister is introducing this legislation in the absence of that change. Therefore, I cannot assess how effective that change might be. I cannot look at it and determine whether there might be some good initiatives in that legislation and whether they might be effective and fill the gap, because, as I have said, there is a gap.

What the minister is doing with this legislation is making it more likely that we will create a university of crime at Banksia Hill. We are already very successful at turning minor offenders into serious lifetime criminals. That is not to denigrate the people at Banksia Hill. I have great admiration for the youth custodial officers and the other staff who work at Banksia Hill, particularly the teachers and psychiatrists. These people are using their best endeavours. But they are working under the constraints of a system that is dysfunctional. Therefore, the likelihood that those people will succeed is very low. The best likelihood of diverting and changing the behaviour of juveniles is—as the Minister for Corrective Services has identified—dealing with them before they get to the stage of prison or detention. What we have now, courtesy of the Barnett government, is a gap in the tools to tackle juveniles before they get to that stage. The government is saying that it is just going to give up; it will let juveniles off if they do the minor stuff, and that will be okay until they get to the age of 16; and, when they hit 16, they will start to accrue some strikes. The government is just truncating the whole process. The government has already taken away the key weapon to tackle the behaviour of these most prolific juvenile offenders. It is now going to truncate the process of getting them into the place that will turn them into criminals. I repeat, because I do not want to be taken out of context here, that I have great respect and admiration for the people who work at Banksia Hill—all of them. It is not their fault. What I have been saying is not exclusive to Western Australia. Don Weatherburn did a study in New South Wales of like-for-like juveniles—that is, same offences—that showed that they were more likely to change their behaviour and end up with a better outcome if they did not go into detention than if they did go into detention. It is pretty concerning to think that we are applying what we perceive as a punishment—or, from the minister's observation, a deterrent—to an individual, and that is making them worse. That is not to say that there are not juveniles who need to be looked up. I have no qualms about saying that. I agree with the member for Butler when he aired his concern about the fact that the government has lowered the minimum sentence for a murder committed by a juvenile in the course of a break-in to three years' imprisonment. That is very disturbing. But, that aside, with respect to burglary, what this government and this minister have done is reduce the effort in this field in trying to change the behaviour of the top-end offenders.

Ms S.F. McGURK: I would like to continue to hear from the member for Warnbro.

Mr P. PAPALIA: This government and this minister have reduced the amount of money that is being spent on this worst category of individual—the high-end juvenile offenders who will end up in detention as their next stop. Not only the physical effort, but also the available programs have been reduced. The only program that targets those individuals has been cut. The amount of money that the current Minister for Corrective Services is spending is a fraction of what was spent in 2008 on the same type of individual. What the government is doing with this legislation is reducing the effort to stop these offenders from committing these crimes. The truth of the matter is that in all likelihood, these offenders will be made worse. They will be hastened along the path of a career of criminality as a consequence of this legislation. The government has truncated the opportunity

available to the system to change these juveniles before they get into the system. We know that one in three juveniles, regardless of their background, their colour and anything else, will fail when they go into the prison system and ultimately will end up reoffending as an adult. In all likelihood, those offenders will be Aboriginal, because we know that between 70 per cent and 90 per cent of the juvenile detainees at Banksia Hill are juvenile. Those Aboriginal juveniles will reoffend at a rate of 80 per cent, and, if they have gone through the adult prison system, they will reoffend at a rate of 70 per cent. Therefore, it might sound good for the government to say that it will be tough and it will apply the three-strikes law and throw these juveniles into prison, but prison is going to make them worse. I am not talking about the murderers; I am talking about the multiple burglary offenders. We should be trying to target those offenders with every possible weapon available to us. However, the minister has taken away the biggest weapon. What the minister is introducing I think is doomed to fail.

Mrs L.M. HARVEY: The member for Warnbro has articulated his point effectively. I will have to agree to disagree. Obviously, the government believes as a policy step that this is the right way to go. We must be doing something right. In 2004, there were 29 172 burglary offences of dwellings in Western Australia. In 2014, the number had dropped to 25 758. That is still a lot of home burglaries, but it is an 11.7 per cent decline over the 10 years from 2004 to 2014.

The member for Warnbro mentioned programs that I am aware of. WA Police works very collaboratively with a number of the jurisdictions in the United Kingdom. I am aware of the Troubled Families program and I am also aware of a range of other initiatives currently being undertaken by WA Police through the local policing model. The member for Fremantle might be interested to know about some good work that has been done with a family in the Fremantle area that had a large number of juveniles who were engaged in antisocial and offending behaviour. When the police got to work with that family, it was discovered that the underlying cause of the problem was their accommodation, because it was not appropriate to their needs. So the local police worked with one of the local churches, and they sourced bedding and housed the family in the church, and as a result of that one simple crime prevention action, the school attendance of those children has increased from 30 per cent to 80 per cent. That means that for 80 per cent of the time when these children are at school, they are not out engaging in antisocial behaviour and offending. So, we are very active in the crime prevention space. WA Police is working on a number of very interesting and exciting projects at the moment around youth offending and crime prevention in trying to divert recidivist offenders from crime and thereby reduce the demand on police resources. We will also continue to engage with our counterparts in the UK who have been trialling a number of programs, some of them more successful than others. We have the advantage of learning from their experience with some of the more edgy and radical programs to determine whether they will be effective in Western Australia.

The member referred to a number of programs. I am not fully across the multi-systemic therapy family intensive team. I am not aware of what sat behind the decision to end that program, but whether the government is purchasing the program from a not-for-profit or another organisation to deliver it or the government is delivering it, the taxpayer still bears the cost of delivering the program. Regardless of who delivers it, the most important and salient point is the effectiveness of the program delivery in diverting people from crime and reducing recidivism rates. That is the conversation I have with the Attorney General and the Minister for Corrective Services. Indeed, Chief Justice Wayne Martin and I have conversations around crime prevention activities and what we can do to have our prolific priority offenders and recidivist offenders diverted from crime and not come to the attention of police.

I take the member's point. This will result in offenders spending more time in detention or prison, depending on their age at the time of the conviction, and we do not shy away from that. Regardless of someone's ethnicity, if a recidivist offender commits these crimes and breaks into people's homes, there is a cost to the community through not only those offenders bearing the consequences of their actions in detention or prison, but also people needing to spend money on fortifying their homes, replacing goods and insurance. Crime has a huge cost to the community. This amendment goes some way to address that issue.

Mr P. PAPALIA: In response to the comments that the minister made about the program in Fremantle, that is wonderful, but it is an example of a component of multi-systemic therapy. Multiple agencies focusing on a troubled and dysfunctional family home is exactly the process, but it is done in a disjointed, disparate and uncoordinated fashion. With all due respect to the departments involved—I commend their efforts because I agree it is wonderful that the police are doing that—we need a structured and coordinated response. That is why I was not disputing the potential for a private operator to provide a particular service. I was saying that when we take it out of the hands of government, we fragment the response. Our greatest opportunity in dealing with this challenge is to employ a coordinated government response. Not only government gets involved; when we employ the multi-systemic therapy response, we use multiple agencies—private operators and suppliers, government, community leaders, activists and volunteers. All manner of responses are brought together, but the only way we can do that in a coordinated fashion is to have government driving it. The only way to have the oversight necessary to determine whether we are succeeding is to keep it in the hands of government.

One of the greatest flaws in the Economic Regulation Authority's discussion paper it released yesterday, "Inquiry into the Efficiency and Performance of Western Australian Prisons", is the suggestion that we get greater transparency from a private operator conducting a service. It refers to not only the prison, but also functions in support of a prison. The ERA view is that it can see a written contract and the obligations on people to deliver the following services and measurements are made and it determines whether it meets the targets. My view is that is not an argument for going to a private operator. That is an argument to change the system under which we operate in the public service to apply the same standards. When we go to the fragmented responses, we will lose a lot. We will lose the ability to provide oversight. This is just a discussion; I know I do not have a question for the minister. I want to move on from that. I appreciate the minister's response. In some regards, the loss of the multi-systemic family intensive team is not her issue. Sadly, that decision was made a long time ago. However, when the minister is making contributions within cabinet and she is considering what to do next, she should not exclude that approach just because the program was cut in 2010. I am sure the minister will get some departmental pushback because there would have been people advocating their own things at the time, but this is documented as having been successful and having had great potential, but it needed better focus and resourcing.

I made an error in the course of my multiple contributions to this debate. I was quoting quite significantly from the December 2001 paper "Mandatory Sentencing in Western Australia and the Impact on Aboriginal Youth". The minister said that she has read it and the researchers have looked at it. In my view, it is the most relevant, most recent and most focused assessment of the impact of three-strikes legislation on Indigenous juveniles in Western Australia. I consistently referred to it as having been authored by Professors Morgan and Blagg, and I overlooked—possibly because my eyesight is getting weaker as I age rapidly —

Mrs L.M. Harvey: You need to get some goggles like I did.

Mr P. PAPALIA: I am in denial on that one.

The third author, who must be acknowledged and I suggest probably had a lot to do with the crafting of this paper, was Victoria Williams from the Aboriginal Legal Service of Western Australia. On behalf of the Aboriginal Legal Service, she made a contribution to a paper I recently released, a lot of which goes to the heart of the issues in this legislation. She should be acknowledged and commended and recognised and my apologies to her for not having done it earlier.

Ms S.F. McGURK: I am interested in what the member has to say.

Mr P. PAPALIA: I want to pose a question to the minister. I understand that paper was considered as part of the process of preparing this legislation. One of the key observations—I think this is relevant in light of the recent discussions that we have had—made in that paper is that the laws are unjust as they impact mainly on less serious offenders. That is true. That is a consequence of effectively truncating the process to get people into prison. Assuming that people commit more offences before they go to prison or detention under the extant rules regarding three strikes, under this new approach, we will capture juveniles who have not committed the extent of offending that would currently result in them being detained. Is that not the case?

Mrs L.M. HARVEY: The member is right to a degree because when the counting rules change, there will be offenders who have a very long offending history who will reoffend and be captured by the three-strikes legislation. Obviously, there will be other offenders who may have started offending subsequent to the proclamation of the legislation who will be captured at an earlier point. That is what happens when legislation is proclaimed. We do not make it apply retrospectively, so there will be a start point to the penalties being imposed as there necessarily needs to be.

Mr P. PAPALIA: Essentially, the answer is yes. I appreciate that, because that is objective. The government is claiming that it is tough, so it will lock up people earlier. The natural extension of that line of thought is that people convicted of less serious offences will go into a facility that we know is pretty successful at turning people into lifelong offenders. I mentioned statistics earlier and that the recidivism rate for Aboriginal juveniles once they go into detention in WA is 80 per cent. The one in three statistic comes from the government. I asked for it a few years ago. One in three individuals who go to Banksia Hill Detention Centre end up reoffending in such a way as an adult that they are sentenced to a length of incarceration in the adult system. We know that 70 per cent of Aboriginal people in the adult system reoffend, so they just keep cycling through. Did the minister look at any analysis of the potential negative consequences of doing what the government is doing—the potential negative consequences, particularly for Aboriginal juveniles, of, essentially, sending them into detention earlier? This goes to the heart of the justification for the law. I have had a lot of people advocate that the whole juvenile component of this legislation is unjust and they would oppose it naturally on those grounds. I oppose it on the ground that it is likely to make matters worse. I would be interested to hear whether analysis or modelling was done to determine the comparative outcomes of the current system versus the consequences once the new three-strikes rule has been imposed.

Mrs L.M. HARVEY: I just want to go back to something the member said. He said that the report from 2001 stated that the laws were unjust as they act on the most serious offenders. I think the member must have meant the least serious offenders.

Mr P. Papalia: You might have misheard me; I thought I said least serious. It does not matter; that is what I meant and you know what I meant.

Mrs L.M. HARVEY: We will correct that. I am sure the member meant the least serious offenders.

Mr P. Papalia: Sorry; I mumbled.

Mrs L.M. HARVEY: Yes.

I would actually like to address this, though, because home burglary is a serious offence; it carries a maximum penalty of 18 years.

Mr P. Papalia: Yes, and the observation in the report was not made on those grounds. The report was not saying that the offence is not serious; it was saying that the government is essentially going to lock people up at an earlier stage of their offending than it does currently, and the report was saying that it was, therefore, unjust. That was the observation in the paper. I am not necessarily of that view, but my concern lies with the likelihood of a worse outcome. That is what I am concerned about.

Mrs L.M. HARVEY: I understand the member's concern, but this idea that home burglary is at the lower end of offending is something that the government is seeking to address with the Criminal Law Amendment (Home Burglary and Other Offences) Bill 2014. The offence carries a maximum penalty of 18 years. When we get out into the community, home burglary is often the only experience that many people will have with crime. When someone breaks into a home and steals somebody's things and violates their house—often there is vandalism involved; all sorts of things—people can become quite unhinged by that experience. They lose days from work while they try to determine what has been taken, their insurance premium may go up or their insurer may require that they take steps to improve their security so that it cannot occur again. It is a huge expense for—a huge impost on—the victims of these crimes, particularly for some families. The people I feel sorriest for are those from the lower socioeconomic groups whose homes are broken into. They may have saved for a year to buy their child a bicycle for Christmas—it might have been on lay-by for a year—and that bike might get stolen when somebody breaks into their home. A lot of people from low socioeconomic groups cannot afford insurance, so if someone breaks into their home, they cannot replace those stolen items because they do not have the financial means to do so. They cannot afford insurance or to put additional security onto their home, so they are just stuck there, caught in a cycle whereby people can break into their home and steal the things that they value. It is a serious offence; the maximum penalty is 18 years for a reason. One of the main reasons for addressing the counting rules with the three-strikes legislation is that people are very frustrated that home after home after home can be broken into by these prolific offenders and they are not receiving a period of detention or imprisonment as a result of that. That is what this bill seeks to address.

I understand who our offending community is and I understand all the causes that lead to crime. That is an area of crime prevention that the government is focused on. We need to do more work there, and there is a lot of work to be done in that space. But we know it can be done and it can be done very effectively, because we have seen that over a six-month period in the south east metropolitan district, with the local policing teams working with the problem families. We saw a 50 per cent reduction in call-outs for police attendance in the worst homes in south east metro. That is significant. So, we know the work can be done if people are prepared to commit to it and passionate people become involved in that area. We are focused on that. Notwithstanding that, when people commit these offences and break into three homes and steal things from three places, we intend that they go to jail for those offences. It is very easy for these offenders to say, "Well, I learnt everything I know when I was in detention", or when they were in prison. It is pretty hard to get into prison in Western Australia. Yes, people will be going to prison earlier for their offending as a result of this legislation, but in my view there have to be consequences for these crimes. If people are going to break into other people's homes and offend, regardless of their ethnicity, they will be caught in the remit of these penalties. Notwithstanding that, yes, we need to spend more time on crime prevention, and we are doing that.

Mr P. PAPALIA: Thanks, minister, but I guess that is a no: no analysis was done, no modelling was done, and the minister is incapable of telling me whether the legislation will have a positive or negative impact on the offending rates of these juveniles the government is targeting. I tell the minister that I am absolutely convinced there will be a worse impact. I am not suggesting that the government does not do anything as an alternative—obviously, it is horrible when people are burgled. I have been burgled and I hated it. I just think the government is weak and it is not doing its job in trying to stop these people from offending. What the government is actually preparing and muscling up to do is increase the tax burden on the state and increase the negative consequences as a result of more burglaries and more victims of crime. These people will reoffend at a higher rate when they come out of that facility

than when they went in. That is what the statistics indicate. The minister has not even bothered to do the research and modelling to determine whether that is the case. What the minister needs to do is put massively more effort into stopping these people from offending. Locking them in prison might stop them for 12 months, but I guarantee that when they come out, they will be much better at what they do than they were before they went in. They will be much better offenders. They will have made contacts. The minister knows that the Auditor General's 2008 report into the most prolific juvenile offenders in this state determined that the 120 most prolific juvenile offenders were predominantly male and Aboriginal and hailed from remote communities. What will happen to them when they come out of those remote communities and go to Banksia Hill Detention Centre in the big smoke and get introduced to some pretty serious criminals inside the juvenile detention facility? Is that going to be a good thing or a bad thing? Is it going to result in more victims of burglary or fewer? Is it going to result in more cost to the system because they will reoffend at a higher rate or less?

The minister cannot tell me, and that is my criticism of her and her government. The government is not evidence-driven. This legislation is nothing more than a slogan. What is tragic about it is that it is a very expensive slogan. It is expensive in terms of the cost to the state in dollar terms, but expensive in terms of the cost to society for all of us because it is going to make matters worse. It is going to create more serious offenders than there were before the legislation was introduced. I reckon we should have some form of Economic and Expenditure Reform Committee for crime and punishment laws. There should be some independent analysis outside of the minister's portfolio and outside of the Attorney General's portfolio that runs at least some degree of scrutiny over any proposed laws before the minister comes out on a Sunday and makes an announcement. That is what should happen. There should be a logical analysis of the likely outcome that the minister should be able to present to us when she comes into this place. The minister will be bringing in another amendment to the Criminal Code; I look forward to that, because I am sure she will not have any evidence to suggest the potential outcome of the next change to the laws of Western Australia that she has been out there touting—the targeting of farmers who lock their gates against fracking companies. That is an outrageous attack on the farmers of Western Australia and other reasonable people who are quite within their rights to oppose and to protest their concerns about activities in the state. That is an outrageous attack on the freedom of Western Australians. I guarantee that when the minister brings that law into Parliament, she will have no modelling, no research and no analysis to be able to convince anybody that it will have a positive outcome, short of saying, "I know it's right. We're sticking by our principles because we believe this is the right thing to do and we don't resile or back away in any way from imposing $24 000 fines on poor farmers who are just fighting for their rights." Did the minister see the article in *The Australian* today about a poor farmer being assaulted?

The ACTING SPEAKER (Ms J.M. Freeman): Relevance, member; we are on this bill.

Mr P. PAPALIA: This is totally relevant. I am talking, Madam Acting Speaker, about the failure of the government, in introducing this legislation, to present any evidence that indicates it is likely to be successful. In fact, quite the contrary; all we have heard in the course of the debate is confirmation that the government has no idea of the outcome. I know and we all know, from the analysis done by people, that the cost imposed as a consequence —

[Member's time expired.]

Ms L.L. BAKER: Madam Acting Speaker, I am very interested to hear the member for Warnbro's contribution and ask that he be allowed to continue.

Mr P. PAPALIA: All we have heard is confirmation of the lack of any degree of analysis or modelling; it is more important with this bill. I am sure that the minister will have no evidence either when the other bill is introduced to suggest that it is required. That bill will be quite transparently dangerous to the poor farmers of Western Australia and other people who are exercising what should be their right of protest in a democracy such as ours. Those people will be clearly threatened, no positive outcome will result and the government will be unable to argue that one. It tried with James Price Point. That was hilarious! The Premier was the greatest threat to James Price Point. The problem with James Price Point was the individual who usually sits behind the minister.

Mr J.R. Quigley: Will you take an interjection?

Mr P. PAPALIA: Absolutely!

Mr J.R. Quigley: And he unlawfully sought to compulsorily acquire, so he was not just taking something from their homes —

Mr P. PAPALIA: Yes, it was deemed unlawful by the High Court of Australia, was it not?

Mr J.R. Quigley: No, it was by the Chief Justice.

Mr P. PAPALIA: It was by the Supreme Court of Western Australia.

Mr J.R. Quigley: And he unlawfully tried to seize their property.

Mr P. PAPALIA: Yes; it was extraordinary.

I was about to refer to a story in *The Australian* today about a farmer being accosted by people from the ANZ Bank in a very aggressive fashion. They came onto his property with a view to locking him out and changing all the locks. His neighbours came around and dumped bales of hay on the rental car and the people from the bank had to flee. However, the interesting thing about that incident is that all those individuals under this new law would be slapped with a $24 000 fine and their tractors would be —

The ACTING SPEAKER: Member, we are at clause 20 of this bill.

Mr P. PAPALIA: I am sorry. I do stray, Madam Acting Speaker; I concede that.

The ACTING SPEAKER: You do stray, member.

Mr J.R. Quigley interjected.

The ACTING SPEAKER: Member for Butler, I am not taking an interjection. The member for Warnbro has the floor.

Mr P. PAPALIA: I was referring to the likelihood that the next piece of legislation will be no better supported in the way of research or modelling than this bill.

The ACTING SPEAKER: Yes, we have got that.

Dr A.D. Buti interjected.

The ACTING SPEAKER: Member for Armadale, I am not taking interjections. The member for Warnbro has the floor.

Mr P. PAPALIA: It is true that the most substantial research undertaken in the course of preparation of this bill was the polling on the likelihood of success of the slogan in the lead-up to the 2013 election, when Ben Morton went out to the community with his focus groups and tested the line, "We're tough on crime. We'll lock up people who break into your house and rape you, and therefore vote for us." That is almost what Liberal Party members did in their robocalls to marginal seats.

Dr A.D. Buti: Did they not also mention a couple of our members who were not supportive of mandatory sentencing? Didn't they also relay that to the punters?

Mr P. PAPALIA: They actually made robocalls to people's electorates saying, "If you don't vote Liberal, then the Labor Party will be letting these guys out." It was actually outrageous.

Dr A.D. Buti: Disgraceful!

Mr P. PAPALIA: It was disgraceful. The Labor Party, the state opposition, is more concerned about getting a good, successful outcome and reducing crime than the minister is. If the minister had any concern and was actually motivated to reduce the number of burglaries in this state—I am talking specifically about this clause and multiple burglaries that are subject to the three-strikes rule—she would have asked for some modelling. She would have made some sort of analysis of whether this legislation is likely to reduce the amount of offending over time. I know that in the short term it will stop an individual who goes into detention for 12 months from offending while they are there. It is true that they will not be offending while they are refining their skill set, building their network and preparing for their future life of crime! However, there is an opportunity cost while they are in detention, because they could be out being subject to a really hard, rigorous, intensive program in their home where the problem resides that could change their behaviour. There is an opportunity cost and a future cost, which is undeniable, of increasing and ramping up the number of lifetime offenders as a consequence of what the minister is doing. The minister cannot just divert focus from that criticism by saying, "We're going to amend another act which isn't here to be considered by the Parliament, is not visible and we know nothing about." The minister is introducing this bill and justifying it on the grounds that she thinks it will reduce offending. It might reduce one person's offending for 12 months, but as soon as they get out, they will be worse; they will reoffend at a higher rate, there will be more victims and in all likelihood they will go on to a much higher rate of offending, at the rate of at least one in three, in their future life and as an adult.

[Member's time expired.]

The ACTING SPEAKER: Time, member! The question is that clause 20 stand as printed.

Ms L.L. BAKER: Madam Acting Speaker —

The ACTING SPEAKER: It is too late. It is time. Minister? Is the member for Maylands standing?

Ms L.L. BAKER: Yes, I am. I am very sorry, Madam Acting Speaker. I was just asking if I might hear the continuation of the member for Warnbro's contribution on this issue.

The ACTING SPEAKER: Be quicker next time, member for Maylands.

Mr P. PAPALIA: That was a hair-trigger-like response!

The ACTING SPEAKER: It was hardly hair-trigger, member for Warnbro, but move on; you have the floor.

Mr P. PAPALIA: I have seen blokes at Campbell Barracks with a less swift trigger finger.

The ACTING SPEAKER: Are you questioning the Acting Speaker's —

Mr P. PAPALIA: No, I would never do that.

I think it might be of value, particularly as I know that this debate is being studied closely by not just people —

Mrs L.M. Harvey: Something of value would be good! A question would be nice.

Mr P. PAPALIA: Okay.

Mr J.R. Quigley: It's the preamble to a question.

Mr P. PAPALIA: I will return to the pre-eminent piece of work, because the minister has not done any, on the impact of this legislation on Indigenous juveniles in Western Australia. It is the paper titled "Mandatory Sentencing in Western Australia and the Impact on Aboriginal Youth" prepared by Professors Morgan and Blagg and Victoria Williams in 2001. I want the minister to address some of their other concerns, because I think they are reasonable. The minister certainly cannot accuse those people of being unreasonable or unprofessional in their approach and not having considered the issue. Because the minister has conducted no modelling or research that would dissuade me of the view, I think what they prepared in 2001 is still the most relevant work. The minister has been incapable of providing anything that would suggest that is not the case. One of the observations they made at the outset in their summary of concerns was the lack of justification for three-strikes laws. It reads —

> They lack any coherent justification; they are ineffective in reducing crime; they cause injustice and distort proper legal processes; and they are profoundly discriminatory in impact, especially on Aboriginal youth.

I will refer specifically to the distortion of the process because I share this concern. The minister knows that a valid and reasonable criticism can be made of mandatory sentencing when a mandatory component is incorporated in legislation, because it devolves discretion to the police. It devolves discretion from the judiciary and the courts to the individual who gets to determine whether they charge someone with an offence that will result in that person being subject to a mandatory sentence. In that regard, the paper states in more detail —

> Mandatory minimum penalties increase the importance of pre-trial decisions by police and prosecuting authorities. These decisions control the decision to prosecute rather than using alternatives and the choice of charge and, therefore, determine both the nature of the current charge and the extent of a person's prior record. They involve decisions which are less transparent and accountable than judicial decision making.

In the course of preparing this legislation, was any analysis done to determine a benchmark or baseline level of charging of juveniles with this type of offence, which will now result in quicker incarceration under the truncated three strikes rule? Is there any level that we know of for the rate at which 16 and 17-year-olds—particularly, in this case, Aboriginal juveniles in Western Australia—are currently charged with burglary once they are 16 years old? What is the current rate, and what does the government anticipate the subsequent rate will be after this legislation is imposed?

Mrs L.M. HARVEY: We collect general information but I am not quite sure what rate the member might be referring to. I am not aware of any data collection that has a rate of offending —

Mr P. Papalia: Is there a per head of population rate or —

Mrs L.M. HARVEY: That kind of information is not readily available. The 2001 report that the member referred to states that mandatory penalties are not working. I expect that that is probably correct, because the counting rules are not effectively "three strikes and you are in"—they never have been. That is what this amendment is here to address. Looking at some of the offender profiles of people we seek to incarcerate at an earlier stage of their offending than currently occurs, one 18-year-old male had his first recorded burglary in 2009, and he has recorded 24 convictions. In 2009, he appeared on two occasions on nine burglary charges. All of these charges were referred to a juvenile justice team and no conviction was recorded under the current legislation. In 2010, he was dealt with on two occasions for burglary offences and received an eight-month intensive youth supervision order, and then an eight-month conditional release. This was his first conviction recorded under the current legislation. Therefore, he had already amassed a range of convictions before he

received one conviction under the legislation. In July 2011, he received eight months' detention for another 11 burglaries—they were all concurrent. This was his second conviction recorded under the current legislation. Twenty-four, plus nine, plus 11—that is 44 convictions and he had a 12-month concurrent sentence with another burglary he committed. In June 2013, he was convicted for a further burglary on a dwelling and received an eight-month youth conditional release order. This was his fourth conviction recorded for burglary on a dwelling. He appeared in court the following month for breaching that order and was placed on a 12-month conditional release order. Shortly afterwards, he was arrested for burglary, committing an offence in a dwelling and stealing over $10 000 from a dwelling house, and he was finally remanded in custody. He was under a conditional release order when his last offence was committed. The legislation is clearly not working as a deterrent for that young man because he did not receive any consequence that was meaningful to him.

A 17-year-old male accumulated 61 criminal convictions. These young people have youth conditional release orders, good behaviour bonds and supervision orders—a whole range of options afforded to them—and it is not stopping them reoffending and they are not receiving any consequences for breaking into people's homes, doing damage there, stealing and a range of other offences. It is time that that stops. That is what this bill will address.

A review clause in the legislation, clause 22, has a requirement for the minister to review the legislation's effectiveness and operation—and at that point, member for Warnbro, I guess the proof will be in the pudding. We will have a look at our burglary rates and our incarceration rate across Western Australia. We will be able to review the consequences that recidivist home burglars have been receiving. At that point, we can argue whether this legislation is successful in achieving the outcome we hope it will achieve. That outcome is a deterrent for some offenders. They talk to each other about receiving consequences—none of them want to go to jail, despite the fact that the member says it is a school for crime. Offenders do not want to be in detention; they do not want to go to prison. Most offenders view that time in prison or detention as a punishment that they do not want, so it does act as some deterrent to some people. The intention is that the measure should drive down crime figures. When these recidivist prolific offenders are locked away, they are not offending in the community. Most importantly for the people in the community, it will deliver a consequence for those actions. That is the intention of these amendments. We will review the legislation five years after the proclamation of the bill, and we can determine at that point whether it was effective or not. I think it will be effective—that is why I have brought it before Parliament.

Mr P. PAPALIA: I have to point out the inconsistency in what the minister just said. At the outset, the minister said it was really difficult to provide statistics regarding the rate of burglaries for 16 to 17-year-old Indigenous people in Western Australia. At her conclusion, the minister said the government will review the legislation in five years' time, or whenever, and determine burglary rates and the rate of incarceration and determine whether it was a success. Clearly, the success of something cannot be measured if it is not benchmarked at the outset of the process. I reckon the government has done this intentionally—not the minister personally, but the government and the people advising it. I think the minister has articulated a wonderful argument for an independent statistics and research authority to gather and be provided with all raw data from WA Police, the Department of Corrective Services and the Department of the Attorney General—these departments be responsible for providing statistics to the public. That authority will be responsible as an independent authority, outside of departments, which have vested interests in defending against criticism, and outside of government, which has a vested interest in defending against the accusation that it is incompetent or incapable of dealing with particular issues.

I cannot trust the argument that this analysis will be conducted in whatever period of time when the review happens if the minister cannot tell me right now the benchmark. What is the baseline? What is the rate of offending by 16 to 17-year-old juveniles generally and Indigenous juveniles? Why is it possible for the Minister for Corrective Services to provide me—which he did yesterday—with the imprisonment rate per hundred thousand for adults, for Aboriginal people, for women, and for Aboriginal women? Did the minister ask the Minister for Corrective Services for some benchmark statistics on juvenile burglary prior to crafting this legislation?

Mrs L.M. HARVEY: I think I have misunderstood what the member asked. I thought the member for Warnbro asked whether I had predictions and modelling on what impact the legislation would have on the rate of offending. We do not have that.

Mr P. Papalia: That is the second part. The first part is to give us the baseline, and then there is —

Mrs L.M. HARVEY: Yes. Obviously, the Minister for Corrective Services can identify the ethnicity of the prison muster. That can be done. When the member says in five years' time when we come back to review the effectiveness of this legislation, the effectiveness will be determined by the reduced rate of home dwelling burglaries. It will be in the reduced rate of that reported crime per 100 000 in the population. When we look at the impact on the system, we will be able to see whether our predictions for the increase in the prison muster were close to accurate or not. We can have that discussion five years after proclamation.

Clause 21 of this bill seeks to separate the offences of home burglary, aggravated home burglary and aggravated burglary. As I have said, that will allow us to get more clarity on the separation of those offences, and we can then transpose them into our statistical analysis. I accept that the member does not accept that that is an appropriate way to measure those offences and that he thinks we do not understand the starting point, but that is how it is with the existing system. Our predictive analysis has come up with an increase to the prison muster of an additional 56 adult prison beds and 29 juvenile detention beds in the first year, and that will increase to 206 adult prison beds and 60 juvenile detention beds in the fourth year. I accept that I have not separated that out into ethnicity, and I cannot commit to saying that I will be able to do that because I do not know whether it is possible within the existing systems.

Mr P. Papalia interjected.

Mrs L.M. HARVEY: Member for Warnbro, I will endeavour to do that, because I am interested in this legislation being effective and achieving the outcomes we intend it to achieve, as I have outlined ad nauseam, no doubt, to people listening. We will analyse that during the legislation's review period.

Mr P. PAPALIA: I look forward in 2020, when the minister will be the Leader of the Opposition, to reviewing this law and its impact, but it will be difficult and challenging because we will have to retrospectively determine the current baseline level of offending in this particular field for burglary by juveniles aged 16 and 17 years. We will have to retrospectively compile that statistic. I do not think it will be that hard, because I know how the Department of Corrective Services works and how these statistics are gathered. I know the department can easily provide that sort of data if one were to ask. I find it extraordinary that the minister did not bother to ask for that. Apparently, WA Police has deemed that it is too difficult to compose any baseline measurement. I wanted that on the table. It is impossible to determine the success of legislation based on an unknown starting point.

Generally, over recent decades—the last two at least—as a percentage of population, the crime and offending rate in most categories has undeniably diminished. In recent times, under this government, in some categories it has gone up. The government should be subject to criticism as a result of that. Looking at overall crime stats—in any jurisdiction in the nation and most western developed countries the same thing has happened—over the last couple of decades the rate of offending for a lot of categories of crime has diminished. That might have something to do with a law that was introduced; it may have nothing to do with a law that was introduced. As the minister is probably aware, there has been a lot of speculation from many people conducting studies on this matter that it has nothing to do with laws and a lot more to do with some social change—at times, obtuse changes to society. There is all sorts of speculation, for instance, in the United States, whether even family planning has had a significant impact on the offending rate—nothing to do with the "broken windows" approach advocated and proclaimed a success by former New York Mayor Rudy Giuliani.

There is an interesting debate around statistics and that is why I reiterate the need for an independent authority that is suitably academically qualified and able to provide reliable and trustworthy statistics. The minister is trumpeting the proclamation of new categories of offences as something good. I suggest that it is a tricky ploy. The minister is stating from the outset that we will never be able to compare the outcome of this legislation with any legislation that preceded it, because there has never been legislation like this before. The offence the minister refers to does not exist, because she is changing that category of offence, and no-one will ever be able to hold her to account because she has not done the work to analyse how many examples of that category of offence existed, or the rate of offending that occurred, prior to the introduction of the new legislation. I think that is the minister's intention. I do not commend the minister for that; I do not think it is a good thing that she is changing the category and the parameters that determine these offences. I think that is clouding the issue and making it more difficult to analyse; it is not making it easier. With regard to juveniles, I do not think anywhere near enough work has been done to ascertain a suitable starting point that can be applied at some time in the future, when we are in government and the minister is in opposition, to try to determine whether or not this legislation has worked. It will not be as easy as it could be were the minister to provide that data at the outset. That is concerning. I am looking around to see whether any of my colleagues might want to contribute.

Dr A.D. Buti: Member, will you take an interjection?

Mr P. PAPALIA: Sure.

Dr A.D. Buti: In America there is a very strong movement amongst the conservative side of politics to re-examine the whole issue of corrective services and try to keep people out of jail, which is more in line with traditional conservative principles.

Mr P. PAPALIA: That is true.

The ACTING SPEAKER: Member for Butler.

Mrs L.M. Harvey interjected.

The ACTING SPEAKER: No worries; minister.

Mr J.R. Quigley interjected.

The ACTING SPEAKER: Member for Butler, the minister wants to answer.

Mrs L.M. HARVEY: I might wait for the member for Warnbro to come back because I am addressing his questions—well, I think they were questions—but the member for Butler may have a question.

Mr J.R. QUIGLEY: I do not want to distract the minister from that, but I will go back to the vein of the member for Warnbro's argument and the precipitating point of this debate, which was the opinion piece by the Commissioner of Police I referred to earlier in which he said that he had the records of a person who had committed 114 offences—many serious offences, multiple aggravated burglaries and home robberies—but who had not until the fifteenth occasion been imprisoned. The minister mentioned that she had no idea of this person's age at the time of his fourteenth offence and whether he would be captured by this legislation. My point is that the following day—I think it was the following day, or the same day that the article was published—the commissioner went on radio and said that it is not about locking up children and throwing away the key. He said that we could construct a detention–type place on a farm somewhere that was not necessarily a jail and that the children just need to be taken off the street and put into some type of care, and when they are a little older, they can get some trade qualifications. Does the government have a plan for meeting the commissioner's suggestion, wish or expectation to build a facility that is not a jail but something such as a farm somewhere, where offenders could be trained in a trade qualification? Is that in the government's plan for these 60 additional beds? Will this meet the commissioner's hopes and expectations or will it dash his hopes by jamming more offenders into Banksia Hill Detention Centre?

Mrs L.M. HARVEY: The commissioner and I are involved in developing a number of very good programs around crime prevention and we are in agreement on some of the additional work that we can do in that area. WA Police is very active in that crime prevention space at present and I may have to make a brief ministerial statement on some of its efforts. When it comes back to the limitations with data—I will go back to the member for Warnbro on this one—the issue is that the lower courts and the higher courts have different case management systems, and the relational data mart tables do not talk to each other as effectively as they could. For the purposes of looking at this legislation for people who at the time of their offence were aged under 16 years, 16 or 17 years, and over 18 years, we extracted charges resulting in conviction of offences related to sections 401(1)(a) and (b) and 401(2)(a) and (b) of the Criminal Code. Data limitations exist on abstracting that data partly because the offences are recorded electronically in terms of act, sections and subsections, and these are only two levels of analysis that the court data can reach. Section 401 of the Criminal Code deals with burglary; subsection (1) deals with intent and subsection (2) deals with the offence when it is being committed. Both subsections have the same construction that identifies different sentence maxima depending on the offence circumstances. For example, subsection 1(a) deals with aggravated burglary; subsection 1(b) deals with home burglary, but the offence is not committed in circumstances of aggravation; and subsection 1(c) deals with any other case, such as burglary other than home burglary and the offence is not committed in circumstances of aggravation. All offences charged under subsections (1)(b) and (2)(b) are easily identified as home burglaries. Those under subsections (1)(c) and (2)(c) are definitely not home burglaries. The problem arises with aggravated burglaries in subsections (1)(a) and (2)(a) because it is impossible to discern from the electronic record whether the aggravated burglary was in a home or otherwise, so we have had to attempt manual extraction of that data, which is why I have not released it; it would have too many caveats on it to release it with confidence. This legislation separates those offences for home burglary, aggravated home burglary and —

Mr P. Papalia interjected.

Mrs L.M. HARVEY: I just need to finish, member. To give the member an idea of some of the estimates we have made and some of the data we have extracted, we looked at the number of people aged 16 and 17 years at the time of the offence who received a conviction for a home burglary or aggravated burglary offence in any court. Of those offenders, the number who received detention imprisonment hovered between 59 and 63 per annum. Not many suspended orders are issued and the number issued varied quite significantly, between one and seven.

Mr P. Papalia: Is that for juveniles?

Mrs L.M. HARVEY: Yes. There were 57 juvenile conditional release orders issued in 2010, 45 were issued in 2011, 49 were issued in 2012 and 47 were issued between January and October 2013. Then there are intensive youth supervision orders, community-based orders, fines, good behaviour bonds and no penalty. We can extract that data but to superimpose ethnicity on top of that requires a manual effort. In any event, it may not be accurate information, so that information is best determined from the actual percentages held within the corrective services system.

Mr J.R. QUIGLEY: Is it correct that the minister said that the difficulty in differentiating between those two categories of offences under subsection (1)(a) and (b) and subsection (2)(a) and (b), and the necessity to extract

that information manually, gives rise to her saying that she does not have sufficient confidence in that information's accuracy to release it publicly?

Mrs L.M. Harvey: Yes.

Mr J.R. QUIGLEY: So am I to understand that the minister relied on the information in framing this legislation? In other words, she does not have sufficient confidence in the accuracy of the figures to let Parliament see them, yet she relied on them to set the policy to frame this bill. How does that work?

Mrs L.M. HARVEY: We can look at the charges laid and the convictions recorded and, as I said, analysis—with its limitations—of the sentencing outcomes in those circumstances. As I said previously, this legislation separates the offences of home burglary, aggravated home burglary and aggravated burglary, which, from the date of proclamation of the bill, will clearly define offenders charged for those offences in the various categories and the conviction outcomes as a result of those charges being laid and convictions recorded. If our assumptions with this legislation are correct, one would expect that we will see a downward trend for those convictions and offences over the five-year period after the proclamation date if it is achieving a deterrent effect.

Mr P. Papalia: That might be the reason, but it might not be.

Mrs L.M. HARVEY: Our assumption is that in all likelihood that will occur, but there will obviously be a lag time because some offenders will have previous convictions under different subsections of the Criminal Code prior to the new counting laws coming into effect. This legislation changes things; it clarifies things and allows us to identify, particularly in that aggravated burglary space, which of these offences are aggravated home burglaries and aggravated burglaries on premises other than a dwelling, which is a useful amendment that we will eventually get to and it will enable greater clarity in public discourse on these matters.

Mr J.R. QUIGLEY: As a Parliament do we all take from that answer that going forward the minister will build a stable and accurate database of all offences and sentences under this legislation? In other words, going forward, this legislation will build an accurate and stable database that we can all rely on when it comes to the five-year review.

Mrs L.M. HARVEY: The database from which we have extracted this information is the case management system. It is not managed as a statistical database. In differentiating those three offences of home burglary, aggravated home burglary and aggravated burglary—we are not discussing this clause yet—we have three different categories of offences, so this will give us a clearer picture of how many of those aggravated burglaries occur in dwellings or other places. The case management system will still exist and we can extract and compare the data from the case management system with this system. But it will make clear to us far more readily how the number of aggravated burglaries is divided between dwellings and non-dwellings.

Mr J.R. QUIGLEY: I understand that, so that we can compare the data with this database, but this "database" is not one the minister is prepared to let us look at. In other words, she said that she has constructed it manually and it is not accurate enough to share with us so she will create a new one of limited nature.

Mrs L.M. Harvey: We are not creating a new database; we are creating three new categories within the new database. From these amendments the member can expect the existing "aggravated burglary" category, which will be separated into "aggravated home burglary" and "aggravated burglary" so we can easily define which of the aggravated burglaries are occurring in a home or non-dwelling. Logically, there will be a combined total to start from and the database will allow us to separate those two new offences.

Mr J.R. QUIGLEY: The minister is not prepared to share with Parliament that which exists at the moment, such as it is, because she is not satisfied with its accuracy. When it is time for the five-year review, will we all be in a position to share the new figures and rely on their accuracy or will they suffer from the same deficiency as the current situation?

Mrs L.M. HARVEY: If the member for Butler reads the review clause in —

Mr J.R. Quigley: We will be coming to that presently.

Mrs L.M. HARVEY: The proposed review section is ahead under clause 22 and reads in part —

> As soon as practicable after the review date the Minister is to review the operation and effectiveness of —
>
> the amendments ...

It also provides that a report of the review has to be laid before each house of Parliament as soon as practicable after it has been done. At that point in time, the minister of the day will be required to table that report before the houses of Parliament.

Mr J.R. QUIGLEY: That was a similar requirement to the amendments to sections 297 and 318 of the Criminal Code. When that report was tabled in the Legislative Council, the Commissioner of Police noted that it

could not be determined whether there was a causal effect between the new amendments and temporary fluctuations in the figures. The Commissioner of Police said that in determining whether the legislation is achieving its intended objectives and meeting community expectations, it is likely that a formal longer-term study will be required. That is, even after five years of operation of sections 297 and 318, the Commissioner of Police could not tell whether the government's amendments to that mandatory sentencing were effective. My concern is that based on the current state of the inaccurate database, together with what the minister is now proposing, without a separate statistical body compiling these figures, how will the Commissioner of Police be in any better position after five years of this mandatory sentencing regime than he was after the first tranche of mandatory sentencing when he said he could not tell?

Mrs L.M. HARVEY: Notwithstanding what the commissioner said, pages 13 to 22 of the "Statutory Review: Operation and Effectiveness of the 2009 amendments to sections 297 and 318 *Criminal Code*" are all statistical tables. Under section 172 of the Criminal Code, the number of charges before the amendment was 8 085; after the amendment, 5 675; section 297 remains stable at 656 before and after the amendment; and, section 318, 5 375 charges before the amendment and 3 913 after the amendment. Under other sections of the code there were 636 976 charges before the amendment, versus 547 244 after the amendment. There is quite a lot of very relevant statistical data in that report and a range of tables. I am not fully across all the commissioner's comments on this review.

Mr J.R. Quigley: They are on page 11 of the report.

Mrs L.M. HARVEY: I think the report's statistical analysis is quite clear, and the tables represent an accurate picture of what has been happening.

Mr J.R. Quigley: Madam Acting Speaker —

The ACTING SPEAKER (Ms J.M. Freeman): Is the member talking about the intent of clause 22 because he wants to move through to clause 22, or is he talking to clause 20?

Mr J.R. QUIGLEY: We want to move on, so we will do that, but the minister raised clause 22.

The ACTING SPEAKER: I get that; I am just assisting.

Mr J.R. QUIGLEY: In relation to clause 20, the minister said that over four years, the estimate is that 60 extra beds are required for juvenile justice. As the commissioner pointed out and as is plain in the Criminal Code, burglary becomes aggravated when committed in company. The Commissioner of Police said that with juveniles, so often—as when my house was burgled by juveniles, done in company because kids go out and do it together—there is the aggravating circumstance straightaway, without a weapon, but there is the mere fact they are together. We heard from the member for Kimberley what is happening in the valley, so in arriving at that estimate, is the minister factoring in the likely increase in offences once families are displaced from their remote communities, given the Premier intends to shift them into centres where they become fringe dwellers or long-grass people such as the fringe dwellers in Kalgoorlie, who are regular offenders, as are the fringe dwellers in Broome? Is the likely outcome an increase in offending by reason of this disastrous social policy of shifting these families from where they are living on their lands into the fringes of regional towns, as we are told by those who know?

Mrs L.M. HARVEY: First of all, the Premier is not shifting people from remote communities into towns, so the hypothetical has not been investigated.

Mr P. PAPALIA: The minister rejected the opposition's amendment with regard to mental illness. Therefore, I am interested to know, before we move on from this clause, whether the new and improved database that we will have, now that we have these new offences, will be able to discern how many offenders charged under this amendment have a diagnosed mental illness and were being treated for such at the time of the offence. The minister indicated also that it is difficult to determine how many offenders are Aboriginal. Will this new and improved database be able to discern how many offenders are Aboriginal? This is not some remote question, because we have a high percentage of Indigenous juveniles in incarceration.

Mrs L.M. HARVEY: Member, this is not a new database.

Debate interrupted, pursuant to standing orders.

[Continued on page 1890.]