

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

*Order of Business — Motion*

**MR J.R. QUIGLEY (Butler)** [2.43 pm] — without notice: I move —

That debate resume on government order of the day 3.

In support of my motion, the Premier said on Tuesday last week in his speech to Parliament that the Criminal Law Amendment (Home Burglary and Other Offences) Bill 2014 was of the highest priority. On Tuesday this week, the Minister for Police said that the home burglary legislation is the government's priority. The Minister for Police has sought the opposition's support to bring on this legislation. We have moved this motion to bring the debate back on this afternoon. I point out that the Premier said that it has the highest priority, but it adjourned the debate after one and a quarter hours, and we have been told that it is not the government's intention to return to it today. So we have moved that debate resume on order of the day 3.

Question put and passed.

*Second Reading*

Resumed from 24 February.

**DR A.D. BUTI (Armadale)** [2.44 pm]: It is interesting —

**Mr C.J. Barnett:** You've got two hours.

**The SPEAKER:** Premier! I want to hear the member for Armadale.

**Dr A.D. BUTI:** It is very interesting, as I get up to contribute to the debate on the Criminal Law Amendment (Home Burglary and Other Offences) Bill 2014, that the dictatorial Premier tells us that we have only two hours to debate this incredibly important legislation that has been brought to this house by the Minister for Police. It is interesting that the Premier has stated that we have only two hours and that we should support it. During question time, the police minister pleaded with us to oppose this legislation. This legislation has been brought before this house purely as a political stunt. The police minister has been snookered by the member for Butler. She cannot get over the fact that we will vote for the legislation.

**Mr C.J. Barnett:** Get on with it.

**Dr A.D. BUTI:** Premier, stop being a bully, because that is what you are!

Several members interjected.

**The SPEAKER:** Members!

**Dr A.D. BUTI:** In my maiden speech in this house, the Premier tried to bully me. He did not succeed then, and he will never succeed, because I take advice only from people I respect, and I do not respect the Premier.

**Ms E. Evangel** interjected.

**The SPEAKER:** Member for Perth, I do not want to hear from you.

**Dr A.D. BUTI:** It is interesting that last year in a debate in this house, the Leader of the House —

**Mr N.W. Morton** interjected.

**The SPEAKER:** Member for Forrestfield, I call you to order for the second time.

**Dr A.D. BUTI:** If I were the member for Forrestfield, I would have felt quite slighted about his contribution the other day.

**The SPEAKER:** Through the Chair, please.

**Dr A.D. BUTI:** On 12 November 2014, the member for Warnbro was on his feet when there was an interjection by the Leader of the House. The Leader of the House said to the member for Warnbro —

Are you able to commit to your side not engaging in a law and order auction in the lead-up to the next election?

I repeat —

Are you able to commit to your side not engaging in a law and order auction in the lead-up to the next election?

The member for Butler gave a guarantee that we would not engage in an auction on law and order, but that is what this government attempted to do before the last election. That is what the legislation before the house is all

about. It was part of the government's law and order auction to try to wedge the opposition, but it is not going to succeed. Even though we will support this legislation —

**Mr J. Norberger** interjected.

**Dr A.D. BUTI:** The member for Joondalup will not be laughing after I have referred to some figures, so he should just hold off on the laughter.

The government's advocacy of mandatory minimum sentencing is interesting. There is a philosophical argument to be had about whether one should agree with mandatory minimum sentencing. Where is the evidence that mandatory minimum sentencing will decrease crime? There is a paper written by the Heritage Foundation in the United States, which of course is a conservative think tank, titled "Reconsidering Mandatory Minimum Sentences: The Arguments for and Against Potential Reforms". In the conclusion to the case for and against, the article states that there is no empirical evidence that imposing mandatory sentencing will reduce crime. Who in this Parliament honestly believes that someone who engages in home burglary and then commits a despicable violent crime against the resident will think, "I won't do this because I may be subject to mandatory sentencing"? How absurd, police minister. Where is the evidence that minimum mandatory sentencing reduces crime? Where is it? The minister, in her contributions to debates, has never provided evidence that it reduces crime. The minister may say to us that after she brought in mandatory sentencing for assaults on police officers they were reduced. This Heritage Foundation article states that the introduction of mandatory sentencing passes the discretion from the judiciary to the prosecutor. Many police officers have stated that they have reduced the charge against an offender because they do not want to go down the line of that person being charged with an assault against a police officer. The then Attorney General brought in the legislation as a result of the public outcry over the assault against the police officer with the surname of Butcher, but that legislation would have had no effect on that case because the defendant was found not guilty of assault. How could legislation that imposes a mandatory sentence for the assault of a public official have changed that situation? The court found in that situation, rightly or wrongly—there was an argument that it was the wrong decision—that the defendant was not guilty of assault against a public official. Therefore, that legislation would not have had any effect on that result.

As to the argument that mandatory sentencing makes our community safe, I am not sure how that actually works. People who commit these despicable crimes do not act in a rational manner. When they are committing these crimes, they are not thinking: there is a law on the statute book that states that if I am convicted, I will end up with a mandatory sentence. The Heritage Foundation article states —

Furthermore, they contend, mandatory minimum sentences do not reduce crime. As University of Minnesota Law Professor Michael Tonry has concluded, "the weight of the evidence clearly shows that enactment of mandatory penalties has either no demonstrable marginal deterrent effects or short-term effects that rapidly waste away." Nor is it clear that mandatory minimum sentences reduce crime through incapacitation.

The article states that imposing a lengthy prison sentence may actually increase the criminality of the offender.

The member for Butler, the lead speaker on this side, stated in his contribution that the current legislation under the Criminal Code imposes severe penalties on someone who engages in a violent assault during a home burglary situation. There was no need to bring in this legislation; it has been done purely for political purposes. The cat was let out of the bag by the Leader of the House last year when he said, "Are you able to commit to your side not engaging in a law and order auction in the lead-up to the next election?" We did not engage in one before the last election; it is always the other side of the political spectrum that does that. The police minister is so upset that she was pleading with us in question time to vote against the legislation! That is what she said: "Vote against the legislation"! Then the Premier was saying, "You make sure you vote for the legislation"! That was when the Minister for Police was out of the house, but the police minister wants us to vote against the legislation. Does the Minister for Police want us to vote for or against the legislation?

**Mrs L.M. Harvey:** I want you to vote authentically with the rhetoric of your debate.

**Dr A.D. BUTI:** Authentically? What does that mean?

Several members interjected.

**The SPEAKER:** Member for Bassendean, quiet. Have you finished, member for Carine? I want the comments through the Chair, member for Armadale.

[Member's time extended.]

**Dr A.D. BUTI:** The minister really wants us to vote against the legislation for whatever philosophical reason we may have. She wants to use this legislation purely for political purposes. It is very interesting that in the article written by Dan Emerson in today's *The West Australian* the Attorney General did not seem to give the minister

much support at all, did he? The Minister for Police says that she now has responsibility for the Attorney General in this house. Leader of the House, when was that relayed to this house? Mr Speaker, I ask for a ruling on this: when portfolio changes occur, is it not incumbent that this house is given —

**The SPEAKER:** Look, it is not for me to answer that right now, so just carry on with your contribution.

**Mr J.H.D. Day:** By way of interjection, my recollection is that the Premier normally tables a statement on that, so just go and check *Hansard*.

**Dr A.D. BUTI:** Did he? Okay, we will go and check.

I can tell the Leader of the House that, although today has not been his finest in this Parliament, it would be better for the government if he had control over Attorney General matters rather than the police minister; the police minister cannot even control her own portfolio, let alone control the portfolio of the Attorney General.

A number of articles have been written on mandatory sentencing that clearly show that although very strong philosophical and emotional arguments can be made for mandatory sentencing, the evidence that it makes a safer community is just not there. It might give the perception of a safer community, but the evidence that it actually creates a safer community is just not there. The only motivating force that drives this police minister is politics. This Minister for Police has never, ever had an intellectual drive behind anything she has done in this house—ever. She is purely driven by politics; that is all she has ever been driven by. There is no philosophical base to any of her arguments. But let us look at the arguments that are often utilised to justify mandatory sentencing.

I refer to an Australian Institute of Criminology report on mandatory sentencing by Declan Roche. The first argument made is crime prevention, which I presume the minister will argue is the main driver behind the Criminal Law Amendment (Home Burglary and Other Offences) Bill 2014. The minister will argue that “mandatory sentencing prevents crime through incapacitation and deterrence”; however, the evidence is that it is not a deterrent. Rational people do not break into homes and commit violent assaults; they just do not do that. The people committing these crimes are not acting on a rational basis, so they are not thinking about the penalty that will be imposed.

Another issue is incapacitation. The minister may argue that by having mandatory sentencing in place, we will be able to put a person away for a set period, and therefore they cannot commit a crime. Obviously, while they are in jail, they will not be able to commit a violent crime—although it would be hard to argue that no criminality takes place in the prison system. However, the current legislation that covers home invasions and violent offences in a home invasion situation imposes severe penalties. The minister is saying that we want to take away the ability of a judge to decide on the sentence; we want Parliament to decide. Parliament, of course, has the ability to impose mandatory sentencing, but strong reasons have to be provided to interfere with the judiciary. The reason should not be political advantage; it should be that it would make society safer.

As the member for Butler stated, one of the consequences of mandatory sentencing is that when a person is charged with an offence that will have a mandatory sentence, they may more than likely not plead guilty; they will seek to fight the charge. That has a number of consequences. As mentioned by the member for Butler, one of those consequences is the victim, who has had a traumatic experience, may be forced to relive the situation in a court in which they may face strong cross-examination by the defence lawyer.

Concerning the issue of deterrence in this Australian Institute of Criminology article, I quote —

... mandatory sentencing relies upon misconceived assumptions about the deterrent effect of punishment. Sherman —

He is a criminologist —

argues that “(f)or too long democratic societies have assumed that all punishment has a general deterrent or preventive effect. But criminology has increasingly disproven that assumption.” ...

Deterrence assumes that people are rational actors who weigh the costs and benefits of committing a crime before deciding whether to commit that crime. However, much crime is impulsive and to the extent that there is any deliberation, “(f)or people who see no attractive options in the legitimate economy, and who are doubtful that they will live another ten years in any event, the threat of an extended prison stay is likely to be far less threatening than it would be to a well-employed person with a family”

Turning to the issue of cost, how cost-effective is mandatory sentencing? Interestingly, this article refers to a cost-benefit analysis done by the RAND Corporation in the United States. It estimates —

... every million dollars spent on California’s three strikes law would prevent 60 serious crimes, whereas providing parent training and assistance for families with young children at risk would prevent

**Extract from *Hansard***

[ASSEMBLY — Thursday, 26 February 2015]

p817d-827a

Mr John Quigley; Dr Tony Buti; Mr Jan Norberger; Mr John Day

---

160 serious crimes, and giving cash incentives to induce disadvantaged high school students to graduate would prevent 258 serious crimes

There is a bit of justice reinvestment there, member for Warnbro.

So, arguments for deterrence do not stack up; arguments for cost effectiveness do not stack up; and arguments for incapacity do not stack up. I quote from the article again about the argument for being consistent—that is, having a consistent system —

While mandatory sentencing sounds like it could achieve consistency, for a number of reasons it in fact does not. Firstly, the inherent imprecision in statutorily defining offences means very unequal offenders can receive the same sentence when convicted under mandatory sentencing. Secondly, mandatory sentences may encourage judges to circumvent the mandatory penalties imposed by legislation. Thirdly, rather than eliminating discretion it simply displaces it to other parts of the criminal justice system, most notably, prosecutors. Discretion is unavoidable in the criminal justice system

It could be argued on democratic grounds that if the community is crying out for mandatory sentencing, as a democratic institution, we should respond to that. No doubt, that is a legitimate argument. But one should also look at empirical evidence and reason to avoid making a situation worse and it should be. The article concluded —

Mandatory sentencing is claimed to prevent crime, introduce certainty and consistency into a criminal justice system lacking in those qualities, and reflect community condemnation of crime. Available evidence suggests that mandatory sentencing can deliver modest, but expensive crime prevention. The large government investment required by mandatory sentencing laws would arguably return a much greater yield in terms of crime prevention if it were invested in prevention policy in areas such as education. Critics also argue that crime prevention by selective incapacitation is a difficult task laced with uncertainty and inconsistency which is done particularly poorly by legislation that imposes punishment automatically on the basis of prior offending. Moreover, they argue that the policy of selective incapacitation is morally questionable, particularly as it routinely disadvantages the poor and marginalised.

In June 2011, the Law Institute of Victoria produced a paper on mandatory minimum sentencing. Part of the executive summary reads —

The overwhelming evidence from Australia and overseas, however, demonstrates that mandatory sentencing does not reduce crime through deterrence nor incapacitation, and may lead to increased crime rates in the long run, as imprisonment has been shown to have a criminogenic effect.

Mandatory minimum sentencing leads to inconsistent sentencing results through the imposition of sentences that may be disproportionate to the gravity of the offending.

In this case, the penalty that would be imposed is not disproportionate to the violent crime, but the current legislative system that we have will ensure that is the case; we do not need to bring in this legislation. Further —

Mandatory sentencing regimes do not remove discretion from the criminal justice system, but shift that discretion away from judicial officers, and on to police and prosecutors.

This is an interesting point —

In jury studies, where jurors are asked which sentence they would impose on a convicted offender, more than half of the jurors suggested a more lenient sentence than the trial judge imposed. Further, when informed of the actual sentence imposed, 90% of jurors said that the judge's sentence was (very or fairly) appropriate.

Mandatory sentencing regimes exacerbate court delay, especially in the County Court, —

The equivalent to the state county court is the District Court here —

as offenders contest charges in order to avoid the mandatory minimum sentence.

The motivation for an offender to assist the authorities with their investigations is also removed.

“Closure” for victims of crime will be delayed under the government's proposal, as more matters will be contested. Victims of crime will also be subjected to the rigours of cross examination as offenders seek to avoid the mandatory minimum penalty.

The proposal —

Of mandatory sentencing —

will have a significant impact on the costs of judicial administration, policing and legal aid funding, as more matters are contested.

The proposal will result in burgeoning costs in relation to housing more prisoners, for longer.

That report was from the Law Institute of Victoria. It is interesting that the police minister brings this bill before the house, but which crime, minister, has increased over the last five years in Western Australia more than any other crime? The minister remains silent. I may be wrong on this, but it is an incredible increase. In the last five years, family violence has increased by nearly 77 per cent. Where is the minister's legislation on family violence? What is the minister going to do to help the victims of family violence?

**Ms E. Evangel:** You're such a bully!

**Dr A.D. BUTI:** A beautiful interjection there, member for Perth.

Where is the minister's legislation to assist family violence victims? Before the last election, the minister's government promised GPS tracking in regards to domestic violence. The government has not introduced this. In the last Parliament, this side of the house introduced legislation to increase the mandatory sentencing to 20 years' imprisonment for people who were convicted of a killing under section 281 of the Criminal Code in a family violence situation. Members on this side wanted to increase the mandatory sentencing from 10 to 20 years' imprisonment. Who opposed it? It was the minister's side of the house. It is the number one law and order issue in Western Australia. There has been a 77 per cent increase in family violence charges—reportable assaults—in Western Australia in the last five years. Members opposite have been silent on that issue. For the interest of the member for Perth—I think she would be interested in this—in those five years during which it has increased 77 per cent, over 70 per cent of the victims in each of those years have been female. Furthermore, on average about 10.5 per cent, in each of those years, have been children. A 77 per cent increase in family violence in five years, and between 80 to 83 per cent each year have either been a woman or a child. Does the member for Perth not think that that is a very important law and order issue? The member's government has done nothing; it has remained silent. Where is the legislation on that issue? One would think that that would be the number one law and order issue on which this government would seek to bring in legislation to try to prevent it from happening. This government has brought in nothing. We brought legislation into the last Parliament that members opposite opposed.

**The ACTING SPEAKER (Mr N.W. Morton):** Order, members! Member for Armadale, you are directing comments to the member for Perth. The member for Perth has interjected enough. Can the member for Armadale talk to the Chair? Thank you.

**Dr A.D. BUTI:** It is interesting that the Minister for Police talks about providing a safe environment for the community or about trying to reduce crime. Of course, home invasions that result in a violent assault are disgraceful and terrible, and they receive a substantial public profile and a lot of media. The Minister for Police thought this was a good political issue to take up and the government has gone forward with it. However, the government has remained silent when it comes to family violence. As I have said numerous times, the Minister for Police is not purely responsible for tackling family violence. I have always stated that she is only one part of the cog of government with regard to family violence. It is a very complex issue, but one on which the minister is an important cog in the wheel of ministerial responsibility. We will never get rid of family violence, but one would think that when we keep talking about law and order, the government would seek to address the crisis that we had. If a crime increases by 77 per cent in five years, one would think that a government would see that as a critical issue that must be addressed.

**Mrs L.M. Harvey:** I agree that it is a serious issue but I cannot do it justice by responding to a request by way of interjection on a complex policy area like domestic violence. I know that the member understands that I work with the Attorney General and also the Minister for Child Protection, Hon Helen Morton, on domestic violence and family violence matters, but I really cannot do it justice by responding through an interjection.

**Dr A.D. BUTI:** All right, but as I said, and I think the minister will also agree that I have always said that it is not her sole responsibility and that it is a complex issue. However, my criticism still remains that we are now two years into this Parliament —

**Ms L.L. Baker:** Seven years.

**Dr A.D. BUTI:** Seven years of this government but two years into this Parliament and the government has not introduced any significant reform to fight family violence. A promise was made at the last election and the government has talked about honouring an election commitment by bringing this legislation before the house, but why is it not honouring its commitment with regard to the GPS monitoring? I do not see that as being as complex as other areas because we already have GPS tracking for sex offenders. If we can have that, why can we not have GPS tracking for people who have a strong probability of committing a domestic violence crime—for

example, with people who have breached violence restraining orders? I do not understand that minister. I am sure that the minister thinks that a crime of family violence is abhorrent—I have no doubt that she does—but I am concerned by the politics being played by bringing this legislation forward. There is no doubt that this is an important issue, but the current legislative framework that we have under the Criminal Code can deal with this. If a person commits a home burglary and then commits a serious assault, the current system will deal with them. The Premier has not been able to identify which judges have been lenient on people who have been found guilty of a home invasion coupled with a violent assault. The current legal system deals with that. However, there is a crisis before this state when it comes to family violence, which has a human, social and economic effect. A report instigated by the commonwealth government in 2009 by KPMG found that family violence cost us \$13.6 billion, and it will cost another \$2 billion over the next 10 years if we do not address the matter. I urge the minister to not play politics with law and order. The minister's colleague sitting next to her, the Leader of the House, made an interjection to the member for Warnbro last year: "Do we promise not to engage in law and order at the next election? You bet we promise we won't engage in it. We didn't last time." However, we also will not be wedged on one issue. The government has sought to wedge us on this issue and it has failed, so it is incumbent upon the government to give us the empirical evidence that shows that this legislation will reduce crime. The government has not been able to do that. Members opposite can make philosophical arguments on mandatory minimum sentencing, but where is the evidence that this legislation will reduce crime? There is no evidence.

**MR J. NORBERGER (Joondalup)** [3.16 pm]: It is not easy competing with the member for Mandurah to get the call. He was like a coiled snake ready to go. I rise to speak in support of the Criminal Law Amendment (Home Burglary and Other Offences) Bill 2014. For those people who may not be in the chamber but will read this later, or who are watching this, I will quickly outline from the explanatory memorandum what this bill seeks to achieve. This bill is attempting to —

- provide mandatory minimum sentences for specific serious offences of physical or sexual violence committed in the course of an aggravated home burglary. These minimum sentences would only apply to adults offenders (18 years of age or older) and juveniles offenders (between 16 years of age and 18 years of age); and
- revise the repeat offender 'counting' rules for the home burglary offence ... ; and
- increase the mandatory minimum sentence for adult repeat home burglary offenders; and
- provide a clear distinction between aggravated home burglaries and aggravated burglaries of places other than dwellings.

The Bill also amends the Sentencing Act 1995 to provide a minimum non-parole period of 15 years for adult offenders who committed murder in the course of an aggravated home burglary.

I will focus predominantly on the mandatory sentencing side as opposed to the three-count adjustment. It is fair to say that this bill has broad community support, which is agreed upon by all in this house. We have heard from a number of members opposite who agree there is an appetite in the community to see tougher sentencing. That fact in itself is important and I will come back to that in a minute.

Some of the repeated accusations that we heard from those opposite and in the public arena is that somehow by introducing this legislation, we are disrespecting our judiciary. We know that the judiciary is a critical part of our three arms of government, and they are respected; I respect them and the members on this side of the house respect the judiciary. They are honoured, and rightly so. They are highly educated and highly knowledgeable, but they are not elected. Our judiciary are not elected members of Parliament. They have not been elected to represent the people of Western Australia. It is a principal role of Parliament to create legislation that is then acted upon by the judiciary—and we are doing just that. A common argument against mandatory sentencing—we heard it yesterday and today again—is that it limits the judiciary's discretion. Of course, in a way it does, but that is no different from how our current setting of maximum sentences also limits the judiciary. Do we not already tell the judiciary what the limit of sentencing is that they may apply in a particular case? What if a judge wanted to hand out a sentence for 30 years for a crime where the maximum sentence is 20 years? Are we not limiting that judge? Are we not limiting the judiciary? Are members opposite arguing that we should abolish any and all specific guidelines for sentencing? Should we place our trust so wholly in the judiciary that we should not provide them any guidance at all so that if a particular judge wanted to hand down life for robbery, so be it? It is rubbish; we do not do that. What we are doing is refining the range within which we would like the judiciary to operate. The current maximum for a number of crimes addressed by the Criminal Law Amendment (Home Burglary and Other Offences) Bill is 20 years' imprisonment, but there is no minimum. In theory—this is a theoretical argument—the judiciary can hand down a sentence anywhere between zero and 20 years. Having listened to our constituency and acting as their representatives in our principal role as legislators, we are indicating that as a society we would like the judiciary to hand down sentences of between 15 and 20 years'

imprisonment. The judiciary can continue to practise discretion. As far as I am concerned, it can hand out a sentence for 16, 17 or 18.5 years. That is discretion; we are giving them a refined range within which to work. As a party, we proudly stand by the decision to introduce this legislation.

**The ACTING SPEAKER (Mr N.W. Morton):** Order, members! Members, I am already struggling to hear the member on his feet. If you could take the conversations outside, that would be appreciated.

**Mr J. NORBERGER:** As a party, we proudly stand by the decision to introduce this legislation. We advised the voting public of our intentions. We were very up-front and honest. We took this to an election. We said that because the Liberal Party is tough on crime, this is what we intend to do. If members of the community had rejected that notion and thought that we were limiting the range within which we are asking the judiciary to sentence for these heinous crimes, they would have voted differently, but they voted for us. Therefore, we are doing the right thing in bringing the legislation to the house.

The real point of interest here is to see how the Labor Party has dealt with this piece of legislation. It has been squirming. We know that many, many people in the Labor Party, including many members opposite —

**Mr P. Papalia** interjected.

**The ACTING SPEAKER:** Member for Warnbro, I call you for the second time. The member for Joondalup has the call. He is not seeking interjections. I have already indicated that it is difficult to hear the member from that part of the chamber. For the purposes of *Hansard*, I would appreciate it if there were no further interjections.

**Mr J. NORBERGER:** We know that many people in the Labor Party and many members opposite strongly oppose mandatory sentencing. We can readily find examples of that in the media and there is plenty of evidence of that peppered throughout *Hansard*; in fact, we heard it again just a moment ago. They come up with every reason known to man: this is terrible; it will not work; the prisons will be too full; and it will cause this issue and that issue. The opposition's lead speaker, no less, the shadow Attorney General, was quoted in the media when he attended the Australian Law Students' Association as saying mandatory sentencing is "bull....". I am pretty sure that anyone listening is smart enough to understand what that is.

**Ms M.M. Quirk** interjected.

**The ACTING SPEAKER:** Member for Girrawheen, I call you to order for the first time. Again, the member for Joondalup has the call. I would like to hear from the member for Joondalup.

**Mr J. NORBERGER:** Thank you, Mr Acting Speaker.

*Point of Order*

**Ms M.M. QUIRK:** The member is quoting from a document. Perhaps he can table that.

**The ACTING SPEAKER (Mr N.W. Morton):** That is done at the member's discretion. He is a backbencher, so he cannot table it, but it is up to his discretion whether he lays it on the table for the rest of today's proceedings.

*Debate Resumed*

**Mr J. NORBERGER:** I am pretty sure that if the member for Girrawheen is so interested, she can google it.

**Ms M.M. Quirk** interjected.

**Mr J. NORBERGER:** It is a Facebook page.

**Ms M.M. Quirk** interjected.

**The ACTING SPEAKER:** Member for Girrawheen! I am on my feet.

**Ms M.M. Quirk** interjected.

**The ACTING SPEAKER:** I am still on my feet. I call you to order for the second time. If you continue to interject, I will call you for a third time.

**Mr J. NORBERGER:** *Hansard* is peppered with the opposition's statements against mandatory sentencing. Even today, admittedly during a different discussion, we heard the Leader of the Opposition remind all members of this house that as members of Parliament we are not expected to agree on everything; we can disagree. Do you know what? He is right. I very rarely agree with the Leader of the Opposition. But it is okay to come into this place, given that we all represent diverse electorates. Between the 59 members in this house and 36 members in the other place, we represent the good people of Western Australia. It is okay to come into this place and have different points of view. I do not have an issue with members opposite disagreeing with mandatory sentencing. It is their right to do so. In fact, if the majority of the opposition's constituency told it that mandatory sentencing is a terrible thing, I would actually go as far to say that it is incumbent on the opposition to represent those views

**Extract from *Hansard***

[ASSEMBLY — Thursday, 26 February 2015]

p817d-827a

Mr John Quigley; Dr Tony Buti; Mr Jan Norberger; Mr John Day

---

in this house. Members opposite should vote against this bill. Any rational person who reads *Hansard* and all the speeches given, including those of the lead speaker, on everything that is wrong with mandatory sentencing, would completely understand and even support the opposition if it crossed the floor and voted against it. Members opposite should be absolutely proud to have their names recorded as noes when the bill comes to a vote. But this is where the Labor Party gives up on any pretence of integrity, conveniently declaring that this bill is not the true will of the people but rather is political posturing, and even though Labor does not agree with it and even though mandatory sentencing seems to have more evils than can be discussed in the time available, it will not oppose the bill. That is interesting. Earlier, the member for Armadale said the opposition would vote for the bill. That has not been the position of members opposite. They said that they would not oppose it. Why? Because to do so, to stand up for what they believe in, would, in their own assessment—anyone who reads the speech given by the member for Butler will see his own assessment—cost the Labor Party precious votes. We know that this is what the community wants and what society wants. The opposition does not want to lose votes, yet it is hypocritical enough to accuse us of being shallow and trying to make a political wedge. No, we genuinely believe in the legislation that we are putting to the house. Members opposite are real hypocrites. One after another, they stood and peppered this place with everything that is wrong with mandatory sentencing: it is horrible; it will cost too much; it will not work; it is terrible. “The poor criminals”, cries out the Labor Party, “What do you mean they have to do their time?”

*Point of Order*

**Ms R. SAFFIOTI:** The member just said that the Labor Party shouts out, “Poor criminals”. I ask the member to provide evidence about that or to stop misleading the house and to not impugn the reputation of members on this side of the house.

**The ACTING SPEAKER:** That is not a point of order.

*Debate Resumed*

**Mr J. NORBERGER:** The Labor Party wants to have it both ways. Admit it, you want to have it both ways!

**Mr D.J. Kelly** interjected.

**The ACTING SPEAKER:** Member for Bassendean, you are sailing close to the wind. The member for Joondalup has the call.

**Mr J. NORBERGER:** Members opposite want plenty of *Hansard* excerpts for their newsletters and plenty of quotes to prove that it stood up to mandatory sentencing because it is terrible, just to keep the bleeding hearts in the electorate happy, but, by the same token, to save their political hide, they say that they cannot vote against it, because it is what the community wants. Members opposite will not oppose it; even though every bit of fibre in them and every bit of their DNA says that they do not agree with it, they will not oppose it. This is a sham of an opposition.

Before I conclude, I draw members’ attention to some of the flawed and diversionary logic and tactics displayed by the opposition’s lead speaker, the member for Butler, on this matter in referring to one of the case examples provided by the Minister for Police in her second reading speech. The case example was of a 78-year-old lady who was brutally and repeatedly raped during a home invasion. A number of speakers have agreed that it would do injustice to the case to go into too much detail of what that poor lady was subjected to. Needless to say, the investigating detective for that case ranked it as one of the top one per cent of sexual offences; what that poor old lady had to go through is in the top one per cent. The offender received a sentence of 11 years in prison, yet the member for Butler, when he said that the judiciary could not possibly have handed down a 15-year sentence, tried to reason that the court was forced by legislation passed in this house to offer a 25 per cent sentencing discount for a plea of guilty. The member took us on a mathematical journey in which he reverse calculated the 11-year sentence to account for the 25 per cent discount, and arrived at 14 years and eight months as the headline sentence. The member used that result as some form of justification for the judiciary when he said that the court handed down 15 years but was forced to reduce it to 11 years. He said that the end result of 11 years and not 15 years was not the fault of the judiciary.

I just do not get that. Member for Butler, I may not be a mathematical genius, but I will take the house on a journey of my own. The member for Butler claims that the judiciary was unable to end up passing a 15-year sentence due to the 25 per cent guilty plea discount. Guess what, member for Butler? The offence carried a 20-year maximum sentence. Members should remember that this case was considered, not by the media or by us, but by the police themselves, as ranking in the top one per cent of the worst sexual crimes they had seen. The judiciary could have started at 20 years and applied a 25 per cent discount for a guilty plea, and that would have left us at 15 years. If a person is in the top one per cent of sexual offenders and does not end up going anywhere near the 20-year maximum, what does that person have to do to end up with a sentence near the maximum? What we heard was the member for Butler using flawed logic in a vain attempt to defend the judiciary.

The real kicker is this: it is fine for opposition members to come into this house and disagree with the government's policies. In fact, it is their right. It is fine for opposition members to come in here and disagree with the government's policies and argue their case. I have no issue with that. If they want to use flawed logic to try to shield their ignorance, that is fine, too; the government will just call them on it, as I have just done. If they want to play political games by completely disagreeing with a piece of legislation but they let it pass to save their political hides, that is their prerogative. Heck, even if they want to declare their lack of confidence in the minister and do not think the minister is doing a good job—even though they are in the minority; we think she is doing a good job—so be it; that is okay. They do not need to think that the minister is doing a good job. No-one is asking for the opposition's endorsement of our minister. However, it is the sexist and misogynist manner in which the member for Butler has gone about this that is truly disgusting.

**Ms L.L. Baker:** Do you understand what “misogyny” means?

**Mr J. NORBERGER:** I do. In debating this legislation and in response to the Premier's Statement last week — Several members interjected.

**Mr J. NORBERGER:** Members opposite should listen carefully to this before they decide to defend the member for Butler. The member for Butler referred to the Minister for Police by saying, “We are saddled with a no-hoper police minister.”

Several members interjected.

**Mr J. NORBERGER:** Righto! He continued by saying, “Her best quality is smiling and batting her eyelashes at the press gallery.”

**Ms M.M. Quirk:** And the problem with that is?

**Mr J. NORBERGER:** Hang on! Then, apparently, she is “ditzzy”, she cannot plead “pig ignorance”, she is a “vacuum”, she knows how to “smile for the cameras”, and she is an “airhead”.

**Mr J.R. Quigley:** That's all true.

**Mr J. NORBERGER:** I am glad that opposition members are defending those statements; quite frankly, members on this side of the house think it is disgusting. We think it is a sexist, filthy attack on the Minister for Police. The irony is that every time the Premier interjects, has a grievance or says something that he does not agree with in relation to a female member of Parliament on that side of the house —

**Ms M.M. Quirk:** Rubbish!

**Mr J. NORBERGER:** Absolutely not. They yell and scream, and the shock is phenomenal—how dare he attack a female member of the opposition!—yet it is okay for the member for Butler to go troppo in a disgusting and sexist manner. We know that for a big part of the debate, when those statements were being made by the member for Butler, the Leader of the Opposition was sitting right in front of the member for Butler. Last week we listened to the Leader of the Opposition lecture this side of the house on how he was leading a team with standards, apparently. He said, “How can the government talk about standards; we've got high standards.” The Leader of the Opposition has an opportunity to show us his standards. Will the Leader of the Opposition endorse the views of the member for Butler? Will the Leader of the Opposition ask the member for Butler to apologise? Let us see what the standards of the Labor Party are. These sexist attacks are a disgrace and they are designed to take —

Several members interjected.

**The ACTING SPEAKER (Mr N.W. Morton):** Members, I am on my feet. I do not appreciate interjections. Member for Joondalup, you are directing comments to members of the opposition and that makes it hard for the Chair to protect you. I suggest you direct your comments to the Chair. Members of the opposition, remain silent, please.

**Mr J. NORBERGER:** I will conclude on this: these sexist attacks, apart from being a disgrace, are designed to take the focus away from Labor's flawed arguments and posturing. It is almost uncomfortable watching the opposition dance around this issue. Opposition members hate mandatory sentencing with every bit of DNA in their bodies, but to save their political skins, that lot is politically posturing. The government actually believes in what it is doing. The opposition does not believe in what the government is doing, but it is going to support this legislation. Who are the hypocrites? The opposition has compromised all credibility in this debate, and I do not care how many more opposition members after me stand and talk about the same drivel and say, “This is terrible, but we are not going to oppose it.” The opposition has lost this argument. Its credibility is gone, its standards are in the dumps and it will be interesting to see whether the Leader of the Opposition is willing to endorse the

statements of the member for Butler and how he decides to conduct himself in this house against the Minister for Police.

*Adjournment of Debate*

**MR J.H.D. DAY (Kalamunda — Leader of the House)** [3.36 pm]: I move —

That the debate be adjourned.

*Division*

Question put and a division taken, the Acting Speaker (Mr N.W. Morton) casting his vote with the ayes, with the following result —

Ayes (32)

|                   |                  |                    |                                    |
|-------------------|------------------|--------------------|------------------------------------|
| Mr P. Abetz       | Ms M.J. Davies   | Mr C.D. Hatton     | Mr N.W. Morton                     |
| Mr F.A. Alban     | Mr J.H.D. Day    | Dr G.G. Jacobs     | Dr M.D. Nahan                      |
| Mr C.J. Barnett   | Ms W.M. Duncan   | Mr R.F. Johnson    | Mr D.C. Nalder                     |
| Mr I.C. Blayney   | Ms E. Evangel    | Mr S.K. L'Estrange | Mr J. Norberger                    |
| Mr I.M. Britza    | Mr J.M. Francis  | Mr W.R. Marmion    | Mr D.T. Redman                     |
| Mr G.M. Castrilli | Mrs G.J. Godfrey | Ms L. Mettam       | Mr M.H. Taylor                     |
| Mr V.A. Catania   | Dr K.D. Hames    | Mr P.T. Miles      | Mr T.K. Waldron                    |
| Mr M.J. Cowper    | Mrs L.M. Harvey  | Ms A.R. Mitchell   | Mr A. Krsticevic ( <i>Teller</i> ) |

Noes (16)

|                  |                |                  |                                     |
|------------------|----------------|------------------|-------------------------------------|
| Ms L.L. Baker    | Mr F.M. Logan  | Mr P. Papalia    | Ms R. Saffioti                      |
| Mr R.H. Cook     | Mr M. McGowan  | Mr J.R. Quigley  | Mr P.C. Tinley                      |
| Mr W.J. Johnston | Ms S.F. McGurk | Ms M.M. Quirk    | Mr P.B. Watson                      |
| Mr D.J. Kelly    | Mr M.P. Murray | Mrs M.H. Roberts | Mr D.A. Templeman ( <i>Teller</i> ) |

---

Pairs

|                 |                    |
|-----------------|--------------------|
| Mr J.E. McGrath | Ms J.M. Freeman    |
| Mr A.P. Jacob   | Dr A.D. Buti       |
| Mr A.J. Simpson | Mr C.J. Tallentire |
| Mr R.S. Love    | Ms J. Farrer       |
| Mr B.J. Grylls  | Mr B.S. Wyatt      |

Question thus passed.