

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

*Consideration in Detail*

**Clause 1 put and passed.**

**Clause 2: Commencement —**

**Mr J.R. QUIGLEY:** Part 1 of the legislation deals with the serious home burglary matters and will come into operation on the day the bill receives royal assent. The amendments that are likely to have the biggest impact on prisoner numbers are those contained in the rest of the bill—that is, the counting of the number of offences for repeat offences—and that will come into operation on a date fixed by proclamation. Why is there a difference between the time that the amendments become effective for serious home burglaries and the time that the amendments become effective for repeat home burglaries?

**Mrs L.M. HARVEY:** The reason we separated those two into paragraphs (a) and (b) is that the amendments in part 2 of the bill will require some information technology changes to be made to the computer systems of both WA Police and the Department of the Attorney General because there will be a new offence of aggravated home burglary.

**Mr J.R. QUIGLEY:** This is very similar to a provision in the anti-association laws in that the so-called anti-bikie laws would come into operation on a date to be fixed. That took over 12 months. Can the minister tell us how long it will take before this section, the rest of the act apart from part 1, will be proclaimed?

**Mrs L.M. HARVEY:** We anticipate that the IT changes will be implemented in the space of two to three months maximum.

**Mr J.R. QUIGLEY:** Given that the minister introduced this legislation over 12 months ago and she has told the community that with the passage of this legislation there will be a huge diminution in the number of home burglaries, why have the police and the minister's department not prepared properly for the implementation of this legislation?

**Mrs L.M. HARVEY:** As the member for Butler is no doubt well aware, we cannot anticipate that the Parliament might choose to make some changes to the legislation. In order to put the IT changes into place, we need a commencement date for the legislation. Obviously, the commencement date cannot be arrived at until the legislation has been through both houses of Parliament.

**Mr J.R. QUIGLEY:** Is the minister able to assure the people of Western Australia that this legislation will not have the inordinate 12-month delay that the anti-association laws had; that is, we will pass this legislation with a welter of publicity but it will not come into operation for a substantial period? Is the minister guaranteeing to the public that this legislation will be operative within a month or so?

**Mrs L.M. HARVEY:** This legislation is nowhere near as complex as the Criminal Organisations Control Act. We therefore anticipate that two to three months after the legislation has been through both houses of Parliament, we will be able to proclaim the remainder of the act.

**Ms M.M. QUIRK:** On this point, I think we passed some legislation in 2010 that was urgent and that expanded the categories of crimes that could be dealt with by way of infringement notices. I understand that legislation is yet to be in force. Are these not the same sorts of issues that arise in the case that the member for Butler has indicated?

**Mrs L.M. HARVEY:** The sequence legislation that the member for Girrawheen is referring to involved a far more complex IT change. We are currently in the process of testing the IT component of that and ensuring that it is workable, and we anticipate that it will be up and running in the near future. The amendment to the legislation that we are discussing at the moment is nowhere near as complex a change required to the IT system. However, as I said, it does need to pass both houses of Parliament and we need a commencement date before we can proceed with initiating those IT changes.

**Mr W.J. JOHNSTON:** Has the minister calculated the number of additional prisoners that will be created by the legislation when it comes into effect? If the minister has, has she calculated the number who will be Indigenous people and is she satisfied that the legislation complies with all the recommendations of the royal commission into black deaths in custody?

**Mrs L.M. HARVEY:** I thank the member for Cannington for raising this matter. It is very difficult to estimate prisoner numbers as a result of legislation; I think the member will appreciate that. When we were discussing the mandatory penalties for assaults against public officers and police officers, it was extremely difficult to determine how much of a deterrent effect the legislation would have and what the impact would be on the imprisonment of people as a result of that offence. Our best efforts at estimating, based on the current prisoner cohort, is that 56 adult prison beds and 29 juvenile detention beds will be required in the first year, increasing to

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approximately 206 adult prison beds and 60 juvenile detention beds in the fourth year. We anticipate the cost of those beds to be in the vicinity of \$13.92 million in the first year. However, we need to assess the impact of the legislation but we do not have the ability to surmise the differentiation in numbers between Indigenous or other ethnic cohorts within the prison population.

**The SPEAKER:** I just want to remind you, member for Cannington, this is about the commencement of the bill.

**Mr W.J. JOHNSTON:** Yes, that is right; that is exactly why I am asking this question.

I will start from the third part of my question, minister, which was whether the minister is satisfied that this legislation complies with all the recommendations of the royal commission into black deaths in custody? I follow that by asking: given that the minister cannot tell us how many Indigenous people will go to jail, does she have any estimation of the number of additional black deaths in custody that will arise from this legislation; and, if there are any black deaths in custody, will that be blood on the minister's hands?

**Mrs L.M. Harvey:** These are entirely separate issues.

**Mr W.J. Johnston:** The royal commission is not an entirely separate issue.

**The SPEAKER:** Member for Cannington, I want you to stick to the commencement of this bill.

**Mr W.J. Johnston:** That's exactly what I'm doing.

**The SPEAKER:** You are not, member for Cannington. I am not going to argue with you.

**Mrs L.M. HARVEY:** The proposed amendment on the notice paper is about consequences for actions and ensuring that there are adequate consequences for a range of actions. With respect to Aboriginal or any other deaths in custody, that is subject to the management of those people while they are in the custody of police and in the custody of the Department of Corrective Services. The management of people who come into the custody of our police officers and our corrective services officers is irrelevant to the offence that had them go to prison as a consequence of their actions. They are therefore entirely separate issues. I believe that the way in which WA Police and the Department of Corrective Services manage people in their custody indicates that they have implemented the vast majority of the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

**Mr W.J. JOHNSTON:** Can I take it that by the time this legislation comes into effect, the minister will not have examined any of the recommendations of the royal commission? On that date this amendment bill will fundamentally change the nature of the laws in Western Australia. There are specific recommendations in the royal commission's report about introducing legislation such as this. Is the minister aware of that? Has she examined the report to make sure that when the law changes, it will comply with the recommendations of the royal commission? The royal commission was not just making recommendations about the handling of Indigenous prisoners; it made recommendations about the style of laws that apply in Australia. That is what I have asked. This is the third occasion I have asked the exact same question. To this moment the minister has not told us whether the recommendations of the royal commission into black deaths in custody, which affect this state, have been considered and complied with in the change to the laws of this state so that we will know that we will not be leading black people to death in our prisons. That is the fundamental thing that occurred in the royal commission. Go and read it, minister. Has the minister read it yet? The minister is happy to interject all the time, so here, why not interject now? Has the minister read the royal commission's recommendations?

**Mrs L.M. Harvey:** Member, you are inviting an interjection, so I will respond. The Royal Commission into Aboriginal Deaths in Custody was held in 1982.

**Mr W.J. JOHNSTON:** That is right. Has the minister read the report?

**The SPEAKER:** I want one person speaking at a time. If you are going to elicit an answer, I will give you the call, otherwise Hansard cannot follow.

**Mr W.J. JOHNSTON:** Members of the Liberal Party are very happy to interject when we are speaking.

**The SPEAKER:** Come back to the bill.

**Mr W.J. JOHNSTON:** That is what happens every time Labor members get up to speak on this bill; we hear interjection after interjection.

**The SPEAKER:** I want you to come back to the point. Let us move on.

**Mr W.J. JOHNSTON:** As far as we are aware, the minister has been asked this question twice. Clause 2(b) states —

the rest of the Act—on a day fixed by proclamation, and different days may be fixed for different provisions.

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When will those days occur? We do not know whether the minister has given any regard to the recommendations of the royal commission. How can that be? We asked a simple question: how many additional Indigenous prisoners will go to jail because of this legislation? This matter was canvassed by the royal commission, and the minister cannot tell us. We asked how many additional black deaths in custody she expects to arise from this legislation. She cannot tell us. We asked whether she will take responsibility for additional black deaths in custody and whether she will see that as blood on someone's hands and she will not answer. The minister has a responsibility to the people of Western Australia to at least tell us whether she has even read the recommendations of the royal commission. That royal commission was groundbreaking in its impact on Australia's justice system. Surely after all these years it is time for governments to respect the hard work of that royal commission. The minister cannot tell us whether she has read the recommendations. When we change these laws on these various days, will she comply with those recommendations? It is a very simple question. If the minister is incapable of answering, it condemns her in every way.

**Mrs L.M. HARVEY:** I think I have already answered that question. Matters relating to the recommendations of the Royal Commission into Aboriginal Deaths in Custody and other royal commissions frequently come across my desk and are cross-referenced on a regular basis. This legislation does not discriminate against people's ethnicity. If people break the law, they will be subject to the consequences of their actions under this legislation. A range of options, including diversionary options, are available for the courts to consider, particularly for young offenders under the Young Offenders Act. This legislation does not discriminate on the grounds of ethnicity. I am aware of a range of recommendations of the royal commission into deaths in custody that the police have put in place. An upgrade of all our custodial facilities in police stations is in train at present, which addresses some of those recommendations of the royal commission to ensure that we are taking care of people appropriately when they are in police custody and dealing with the consequences of their law-breaking actions.

**Mr W.J. JOHNSTON:** When did the minister read the recommendations of the royal commission?

**The SPEAKER:** That has nothing to do with the —

**Mr W.J. Johnston:** Yes, it does.

**The SPEAKER:** I am not going to argue with you, member for Cannington.

**Mr P. PAPALIA:** As I have telegraphed to the minister through my speech on the second reading and prior to that during the general debate on the Premier's Statement, I am very interested and deeply concerned about the level of research and justification for this legislation. At this point I am going to seek some advice from the minister as to what level of research was undertaken. I could do it when we consider different parts of the bill but I think this is the appropriate time when we are debating the short title.

**Mrs L.M. Harvey:** We are not on the short title; we are on the commencement.

**Mr P. PAPALIA:** I think it is a good time to do it right now.

**The SPEAKER:** Do you have something to say about the commencement?

**Mr P. PAPALIA:** This is the first opportunity I have had to question the minister on the extent of the research conducted by her department, herself and her office in developing this legislation and the justification for the arguments they presented to the people of Western Australia prior to the last election relating to the outcomes of this legislation. Following on from questions about the Royal Commission into Aboriginal Deaths in Custody, I wish to ask a question about a more recent document. I am interested to know whether the minister or the researchers in her department or her office consulted the study entitled "Mandatory Sentencing in Western Australia & the Impact on Aboriginal Youth" by Professors Neil Morgan and Harry Blagg, which was published in December 2001, prior to crafting this legislation.

**The SPEAKER:** This clause relates to the commencement of the act. You have gone into a very long convoluted question that has nothing to do with the commencement of the act.

**Mr J.R. QUIGLEY:** I have a question but I am in your hands, Mr Speaker.

**The SPEAKER:** That is dangerous, member for Butler.

**Mr J.R. QUIGLEY:** Never, Mr Speaker. I have known you for 20 years. I am in your hands.

I would not have asked the question in this clause but it has been mentioned in this clause; that is, the increase in prisoner numbers. I seek clarification. Would you like me to hold that until later?

**The SPEAKER:** I would like you to hold it.

**Ms M.M. QUIRK:** I wish to ask a question relating to an answer that the minister gave in response to this clause. The minister made the statement that the law applies equally to everyone. Is she familiar with the concept of substantive equality and the fact that laws created in this Parliament disproportionately impact some members

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of the community? Equality of the law does not necessarily mean equality of outcomes. Is the minister familiar with that? If she cannot give us the exact estimate of additional Indigenous prisoner numbers, can she at least give us some indication of whether that was addressed in any of her briefings?

**Mrs L.M. Harvey:** No.

**The SPEAKER:** Member for Girrawheen, again, I do not see how that question ties in with the commencement date of this bill.

**Ms M.M. QUIRK:** It ties in with the commencement date because we have already heard that there are impediments to the date on which the act can commence. One of those impediments may well be the increase in the prison population and the location where those people come from. That is relevant to the commencement.

**Mrs L.M. HARVEY:** As I said previously in response to a question about the estimates of prisoner beds, when we dealt with Corrective Services on this matter, it was referring only to prisoner beds. They were separated into juvenile facilities and adult facilities. The department does not break down those beds by ethnicity with respect to legislation because people who offend in this manner are represented by all ethnic groups in Western Australia. The commencement date of this legislation, as previously mentioned, will be delayed by only two to three months from the date that it passes through this Parliament to ensure that those information technology fixes are in place; that is, the WA Police computer system and the Department of the Attorney General computer system. That will be the only delay to the commencement date. We will deal with all of the other matters with respect to potential increases in prisoner population as and when they arise.

**Ms M.M. QUIRK:** Minister, I asked a question fundamental to this whole issue: what is your understanding of the term “substantive equality”?

**Mrs L.M. HARVEY:** Madam Deputy Speaker —

Several members interjected.

**The DEPUTY SPEAKER:** Order, member for Girrawheen! Order!

**Mrs L.M. HARVEY:** Of course I am familiar with the concept of substantive equality, but that is not what we are debating at the moment. If the member would like to bring on a motion during private member’s business, I would be happy to have that debate with her.

Several members interjected.

**Mr P. PAPALIA:** I have a question on the commencement date. In light of the commitment made by the Premier to the Aboriginal people of Western Australia that he would address the inordinately disproportionate representation of Aboriginal people in prison, and the likelihood that when this legislation comes into force it will have an impact on that already disproportionate representation, has any consideration been given to the commencement date, given that the Premier’s office is conducting an investigation into what can be done to reduce Aboriginal incarceration? Has any consideration been given to the potential impact of that study and any recommendations that flow from it on this legislation when it comes into force?

**The DEPUTY SPEAKER:** Member for Warnbro, that question started on the commencement date, but it strayed into matters that were not really relevant to this clause.

**Mr P. PAPALIA:** Thank you, Madam Deputy Speaker. In determining the commencement date, was any consideration given to the fact that the Premier’s office is conducting a study in an attempt to reduce Aboriginal overrepresentation in our prison system, noting that this legislation will increase that overrepresentation?

**Mrs L.M. HARVEY:** The assertion that this bill is going to increase disproportionately the representation of Aboriginal people in the prison system is one that the member for Warnbro makes; it is not one that I necessarily concur with. With respect to looking at the Aboriginal incarceration rate in Western Australia, I am involved in that conversation, as is WA Police. We still believe that there should be consequences for actions when people break the law, but obviously the focus of that issue needs to be around improving the social disadvantage of that cohort of people in the community who find themselves in the cycle of crime. That focus includes crime prevention initiatives, dealing with family violence and dealing with all the matters that lead to crime. That is a debate for another time, but it is certainly a conversation that is active between my office, the Premier’s office, the Minister for Corrective Services and the Attorney General. That is a different matter from the amendment on the notice paper, but it is a very active conversation in trying to prevent people from engaging in crime and therefore not entering the justice system. But if they engage in crime, they will be subject to this legislation if it is relevant to them.

**Mr P. Papalia:** Before you sit down, by way of interjection —

**The DEPUTY SPEAKER:** Member for Warnbro, are you asking another question?

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**Mr P. Papalia:** While the minister is on her feet, to save time. You said you disagree with my assertion that this bill will increase disproportionate Aboriginal representation. What research or evidence do you have to sustain that argument?

**Mrs L.M. HARVEY:** I have not seen any research or evidence to suggest that it will be so.

**Mr P. Papalia:** Have you looked at this report by Professor Morgan and Professor Blagg in 2001?

**Mrs L.M. HARVEY:** I have, and that is 13 years old. We have other initiatives of government that we are implementing to try to reduce the offending rate of the Aboriginal population.

**Mr P. Papalia:** It deals specifically with this law.

**Mrs L.M. HARVEY:** It is not relevant to this clause.

**Mr P. Papalia:** It's actually this law. You're amending the law that it reports on.

**The DEPUTY SPEAKER:** Member for Warnbro! Thank you. Are there further questions on clause 2?

**Clause put and passed.**

**Clause 3: Act amended —**

**Mr J.R. QUIGLEY:** In the *Government Gazette* dated 21 March 2013, the minister was appointed Minister for Police, amongst other things, and Hon Michael Mischin was appointed Attorney General.

**Mrs L.M. Harvey:** A very fine Attorney General, if I may say.

**Mr J.R. QUIGLEY:** By way of aside, as they say in the movies, "You would say that, wouldn't you?"

**The DEPUTY SPEAKER:** Could we have your question please, member for Butler.

**Mr J.R. QUIGLEY:** I was interjected upon, Madam Deputy Speaker.

The *Government Gazette* reads —

It is also notified for public information that the Governor, in Executive Council, under Section 43 of the *Constitution Acts Amendment Act 1899*, has designated and declared that, with effect on and from 21 March 2013, there shall be seventeen principal executive offices of the Government for the purposes of the said Act, as follows—

It then further along lists the minister as, amongst her other onerous duties, as —

Hon Liza Mary Harvey MLA

Minister for Police; Road Safety; Small Business; Women's Interests

It also lists —

Hon Michael Mischin MLC

Attorney General; Minister for Commerce

It goes on then to —

**The DEPUTY SPEAKER:** Member for Butler, I am having difficulty working out how this relates to the one sentence in clause 3, so I would be grateful if you could assist me there, please.

**Mr J.R. QUIGLEY:** I give the Deputy Speaker the undertaking that it does.

**The DEPUTY SPEAKER:** Okay; thank you.

**Mr J.R. QUIGLEY:** It goes on then to proclaim by declaration the responsibilities for the administration of various pieces of legislation. On page 3 it proclaims that the Criminal Code Act Compilation Act 1913 is to be administered by the portfolio of the Attorney General, and the agency assisting the Department of the Attorney General. How is it that this significant amendment of the Criminal Code has not been brought before the Parliament by the minister that His Excellency proclaimed would be responsible for the administration of the Criminal Code? Do you see my point, Madam Deputy Speaker?

**The DEPUTY SPEAKER:** I do, thank you, member for Butler.

**Mrs L.M. HARVEY:** As the member is aware, Hon Michael Mischin, the Attorney General, is responsible for this legislation in the other place, the Legislative Council; I represent him in the Legislative Assembly. Any bill that may have a financial implication for the government—which this one may have, as we have discussed, with the impact on Department of Corrective Services—needs to be introduced in the Legislative Assembly. That has been the protocol of the Parliament for a long time, and that is why this bill has been introduced into the Legislative Assembly by me as a representative of the Attorney General.

**Mr J.R. QUIGLEY:** May I understand from the minister's given answer that this is the Attorney General's bill, but that you are representing him in this chamber?

**Mrs L.M. HARVEY:** It's the government's bill.

**Mr J.R. QUIGLEY:** Who is the minister responsible for this bill?

**Mrs L.M. HARVEY:** It is the Liberal-National government's legislation. The Attorney General, who is responsible for the Criminal Code, is ultimately responsible for this legislation. However, as was previously explained, he cannot introduce a bill or an amendment into this house. As his representative in the Legislative Assembly, I introduced the bill on his behalf and on behalf of the government.

**Mr J.R. QUIGLEY:** I find that curious given when approached for a comment on this bill, as reported on 26 February 2015, Mr Mischin said he would not comment on "another minister's legislation". The honourable Attorney General is saying that he is not responsible for either the introduction or the preparation of this bill; it is the Minister for Police's bill, is it not?

**Mrs L.M. HARVEY:** The member would need to check with the Attorney General why he made those comments.

**Mr J.R. QUIGLEY:** In the preparation of this bill, did the Attorney General prepare the drafting instructions for this bill, or was it the police department and the people that the minister has at the ministerial table who prepared the drafting instructions?

**Mrs L.M. HARVEY:** Obviously, the Attorney General's office and my office worked together on this legislation. The police are responsible for implementing the Criminal Code out in the community. The police legislative services, the State Solicitor's Office, Parliamentary Counsel's Office and the Department of the Attorney General were all working collaboratively on drafting this piece of legislation, as would be expected.

**Mr J.R. QUIGLEY:** I ask this, because we were favoured with a briefing on this bill, and at that briefing to explain this bill were representatives from only the police department and none at all from the Department of the Attorney General. At the briefing I asked the gentleman who is with the minister whether I could see the drafting instructions so that I could understand how this came forward, and the only piece of paper that he was able to offer was the Premier's press release; that was the only drafting instruction. Is that correct?

**Mrs L.M. HARVEY:** I am sure the member for Butler is probably aware that drafting instructions are cabinet-in-confidence and it is not appropriate to bring cabinet documents to a briefing.

**Dr A.D. BUTI:** I have a couple of points on that. The minister said that she is representing the Attorney General in this house. I raised this last week; previously it was the Leader of the House. When was this house notified that the minister was taking over carriage of the Attorney General's portfolio? The Minister for Police has stated that the reason this bill has been introduced in this house, rather than the other house, is that there are financial implications. When the Attorney General introduces most of the bills that he introduces in the upper house, there would be a financial implication. For instance, I think there is a bill before the other house to prohibit the prevention of lawful activity, and that will also have financial implications. Is the minister not misleading this house by saying the reason that it has been introduced here is that it will have financial implications, when that would be the case for nearly all of the Attorney General's bills?

**Mrs L.M. HARVEY:** I think I have been pretty clear about why I am introducing this legislation in this house as a representative of the Attorney General. I am not certain when Parliament was notified of that change in duty. However, that is my role at this point in time, and I would really like to proceed with the clauses.

**Dr A.D. BUTI:** Can the minister please provide, if not at this stage, at a later stage, when this house was notified that the minister was taking over responsibility for representing the Attorney General's portfolio in this house? It is important for this house to know when that happened. This house has a right to know when a minister is representing another minister from the other house. Can the minister please provide that information at some stage? The minister stated that she is representing the Attorney General and that is why the minister has carriage of this bill, but she has stated that it is because of financial implications. My question remains: why is this different from nearly all of the Attorney General's legislation, which also has financial implications? Please answer that question.

**Mrs L.M. HARVEY:** In putting this legislation together, we can see and therefore make an estimate of the effect this legislation will have on prisoner numbers. We can look at the number of prisoners currently in our detention facilities for the offences that we are discussing and we can make a reasonable hypothecation of how those prison terms may be increased and the number of additional days or months offenders may be imprisoned, and determine the potential financial implications of this legislation to the state. The legislation the member for Armadale is referring to that is currently being debated in the Legislative Council will create a new offence. Until that new offence has been created and we have an understanding of the impact that that may have, the

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financial ramifications of that at this point in time are unknown and are not anticipated to be significant. We know there is a financial ramification from this legislation. We know it will have some impact on prisoner bed numbers that the state will be required to provide, so it is appropriate that it be introduced into the Legislative Assembly.

**Dr A.D. BUTI:** I find that a curious answer, minister. Whether it has financial implications is determined by the quantum of the financial implications. If there is a financial implication, the quantum of that is irrelevant. I repeat: nearly, but not all, the legislation the Attorney General introduces will have a financial implication. The minister is not answering why the Minister for Police has introduced this particular bill to this house. I will ask again: will the minister give an undertaking to provide this house with proof that this house has been notified that the Minister for Police is taking over responsibility for the Attorney General's portfolio in this house?

**Mrs L.M. HARVEY:** This is a key election commitment of the Liberal–National government. It requires the cooperation of police and the Department of the Attorney General, and it crosses a range of portfolios. It is appropriate that it has been brought into this chamber to be debated first. The government makes those decisions, but in addition we know that there will be a financial cost to the state as a result of bringing this legislation forward. I think we have canvassed these issues sufficiently. With respect to the date that the Parliament was notified, as I said previously in my answer, had the member been listening, I will endeavour to get that information to the member; it is not necessarily my responsibility. However, I am here representing the Attorney General. I would like to continue with debate on the legislation.

**Dr A.D. BUTI:** I am very curious that the minister believes that whoever in this house represents whoever in the other house is just going to be determined by that person. We do actually have procedures here, and it is important for this house to know when the minister is responsible for a certain portfolio.

**Mr C.J. Barnett:** Representations between the houses was tabled by myself at the beginning of this parliamentary session.

**Dr A.D. BUTI:** Premier, that was a question that I was trying to get an answer to.

**Mr C.J. Barnett:** It was tabled; the member should have been concentrating at the time.

**Dr A.D. BUTI:** The Premier's minister does not even know, so do not go on about me concentrating. The minister does not even know!

**Mr P. PAPALIA:** I have a quick question, following on from the minister's observation about the much more detailed knowledge we have of the financial impact of this legislation, as opposed to the other bill in the upper house. Can the minister tell the house the projected recurrent cost of this legislation in the third year from its implementation when those full figures of 206 adults and 60 juveniles will come to fruition? If they do, what will be the recurrent cost to the budget at that time?

**Mrs L.M. HARVEY:** As I mentioned previously, based on the current prison population and incarceration rates we estimate an additional 56 adult prison beds and 29 juvenile detention beds required in the first year, increasing to 206 adult prison beds —

**Mr J.R. Quigley** interjected.

**The DEPUTY SPEAKER:** Order! Minister, your voice was a bit low, so if you could speak up, it would be good.

**Mrs L.M. HARVEY:** I have answered the question previously, but I will say it again: we estimated 56 adult prison beds and 29 juvenile detention beds in the first year, potentially increasing to 206 adult prison beds and 60 juvenile detention beds in the fourth year. The estimate of those costs for Corrective Services, based on a daily cost of \$333 for adults and \$678 for juveniles will be \$13.92 million in the first full year of the legislation being in place, increasing to approximately \$43 million in the fourth year. However, I provide a caveat to those estimates that we do not know, and it is very difficult to quantify, what the deterrent effect of legislation like this might be and the impact it may have on criminal offending.

**Mr P. PAPALIA:** Just a small correction, minister. In the current budget the cost per day for an adult prisoner is \$345. My estimation is based on those figures and for juveniles and adults in the fourth year—the third year after implementation—\$93 million recurrent will be added to the budget. The government's inability to project any reduction as a result of recidivism suggests that it is a very lightweight justification for the bill. The argument the minister made in the public domain was that this bill will considerably reduce burglary —

**The DEPUTY SPEAKER:** Member for Warnbro, I think you are straying from the six words of clause 3.

**Mr P. PAPALIA:** I have a question in regards to that. What is the latest study that the minister's office, the Attorney General's office or the department analysed with respect to the potential impact of the amendment to

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the three-strikes legislation being debated in this house in Western Australia? What was the latest study assessed with regard to both the impact historically and any potential further impact as a consequence of the change?

**Mrs L.M. HARVEY:** The member for Warnbro is getting recurrent cost and capital cost confused. When there was debate and discussion in the early days of this legislation first being proposed, there was some conjecture in the community that there may be a requirement to build a new facility and that cost was put at \$93 million, which is where that figure has come from.

**Mr P. Papalia:** No, I calculated the costs; 206 adults and 60 juveniles adds up to \$93 million recurrent.

**The DEPUTY SPEAKER:** Order, member for Warnbro!

**Mrs L.M. HARVEY:** Although the actual daily cost may be dated, those are the estimates I have been provided with.

**Mr P. Papalia** interjected.

**The DEPUTY SPEAKER:** Member for Warnbro, allow the member to complete her answer, please.

**Mrs L.M. HARVEY:** As I said, the costs I have are the estimates that have been provided to me at this point in time, but it is impossible to determine the deterrent effect of new legislation when it is introduced.

**Mr J.R. QUIGLEY:** As to responsibility, we are going to come to some of these clauses in detail later and some of the clauses seem to contradict some of the Attorney General's previous legislation and public statements. I refer to the Premier's helpful interjection earlier that at the start of the Parliament he tabled the list of ministers in this chamber who would be representing ministers from the other chamber.

**Mr C.J. Barnett:** And vice versa.

**Mr J.R. QUIGLEY:** I was paying attention and it was the honourable Deputy Premier who was nominated as the minister representing the Attorney General.

**Mr C.J. Barnett:** That was last year. This year it is the police minister. This year the police minister represents the Attorney General and vice versa.

**Mr J.R. QUIGLEY:** That was tabled this year, was it?

**Mr C.J. Barnett:** Yes, that's correct.

**Mr J.R. QUIGLEY:** Therefore, I ask: when this bill was introduced last year and second read by the minister last year, is she able to confirm, based on the helpful interjection by the Premier, that at that time she introduced and second read this bill into this chamber she was not the minister representing the Attorney General in this chamber?

**Mrs L.M. HARVEY:** Madam Deputy Speaker —

**Mr C.J. Barnett** interjected.

**The DEPUTY SPEAKER:** Order, Premier!

**Mrs L.M. HARVEY:** I am the police minister in the state of Western Australia, member for Butler. I am very familiar with this piece of legislation and have been heavily involved in the drafting and management of it. As such, I read it in. It is here; it is being debated. I am curious about what point the member is trying to make on clause 3, which states —

**Act amended**

This Part amends *The Criminal Code*.

I am here as the WA police minister representing the Attorney General and the government in the state of Western Australia with this amendment to the Criminal Code. I have been authorised as the responsible minister to bring this legislation through this Parliament. I would like to get on with it.

**Mr J.R. QUIGLEY:** I thank the minister. She might then be kind enough to get on with answering this one question. Is it true that at the time the minister introduced this bill into this chamber, she did so as police minister and not as the minister representing the Attorney General?

**Mrs L.M. Harvey:** I think that is exactly what I just said.

**Dr A.D. BUTI:** The minister stated last week and numerous times today that she had carriage of this bill representing the Attorney General. *Hansard* will show that is what she stated, so she is misleading Parliament. She is either the police minister with carriage of this bill or the minister representing the Attorney General. Today and also last week, the minister said she had carriage of this bill representing the Attorney General. The minister has definitely misled Parliament.

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**Mrs L.M. HARVEY:** I am multitasking, member for Armadale; I am the Minister for Police and I am also representing the Attorney General —

**Dr A.D. Buti** interjected.

**The DEPUTY SPEAKER:** Member for Armadale, allow the minister to answer.

**Mrs L.M. HARVEY:** I am also representing the Attorney General with a key piece of legislation that was an election commitment of the government.

**Dr A.D. BUTI:** Yes, we do want to progress this bill, but it will be very difficult if that is to be the quality of the minister's answers. One minute in an answer to the member for Butler she states that she was the police minister when she introduced this bill, but for the rest of today and last week, the minister stated she had carriage of this bill in this house as the representative of the Attorney General. The minister cannot just flip-flop. In response to a question or interjection by the member for Mandurah the minister said the bill was being introduced into this house because it will have financial implications and that may be an argument she can carry; however, she has flip-flopped on what position she holds in relation to this bill. It is very important to know whether she is the police minister carrying this bill in this house or the minister representing the Attorney General. Today and last week the minister stated that she had carriage of the bill in this house representing the Attorney General. In response to the member for Butler just then, she said she introduced the bill as the police minister. It is just absolutely absurd that the minister can flip-flop and mislead Parliament.

**Mr P. PAPALIA:** I owe the minister an apology, so I will apologise. She is right, I was getting those figures with regards to costs mixed up in my head. Can I ask the minister to give the house the projected recurrent costs in the fourth year if the figures she identified—being 206 adults and 60 juveniles—come to pass?

**Mrs L.M. HARVEY:** I have already given those figures, member. The figures that have been provided to me by Corrective Services have that cost at \$42.98 million in the fourth year. I understand that the member has a different cost per day. But Corrective Services has provided me with that information, and that is what I am basing my answer on.

**Mr P. PAPALIA:** I want to go back to the other part of the question that I asked earlier. With respect to the research that was conducted in crafting this bill by either the minister's office, the Attorney General's office or the Department of Corrective Services, what was the most recent study of the Western Australian legislation, and the impact of the three-strikes component of that legislation in particular, that was analysed by the people crafting the bill in determining the potential outcome?

**Mrs L.M. HARVEY:** It was a very interesting research project, actually, that was conducted with the assistance of police and the Attorney General. It was quite a painstaking process, member for Warnbro, because dwelling burglary in circumstances of aggravation had not been separated out in the systems of either the police or the Department of the Attorney General as a way for us to determine the exact number of those offences. Part of the reason that we have created a new offence in this piece of legislation is to ensure that we can correctly separate out the different levels of offences and determine how many individuals who offend in that manner are being captured by this legislation. It was not a report. It was more of a research project in putting the cabinet submission together, putting the legislation together and forming the drafting instructions et cetera. It was not a formal published report. It was a painstaking and longwinded research project to try to come up with the possible increase in bed numbers and the number of offenders who might be captured by the legislation. So I cannot give the member a report to table. It was actually a research project for a number of agencies and a number of individuals.

**Mr P. PAPALIA:** In the course of that internal study that was done, was any effort made to determine the potential impact on Aboriginal juveniles in particular, and Aboriginal adults, in light of the concerns aired by the member for Cannington, and also in light of the recent commitment made by the Premier?

**Mrs L.M. HARVEY:** That is actually a particularly difficult piece of work to try to do, because the police will identify people by ethnicity only if they self-initiate an identification of ethnicity. It is very difficult to then go into the police system to try to get an accurate depiction of the ethnicity of offenders and compare that with the Department of the Attorney General's assessment. Also, once people end up in the corrective services system, ethnicity is recorded in a different way. Therefore, it is very difficult to try to get the information from the three systems together and extrapolate that data out with respect to the impact of legislation in which we are creating a new offence. That is why I am not prepared to put a figure out there, because the base systems that we extrapolate our figures from do not collect data in the same fashion.

**Mr P. PAPALIA:** Minister —

**The DEPUTY SPEAKER:** Member for Warnbro, we have had a fair bit of latitude in looking at this clause.

**Mr P. PAPALIA:** Madam Deputy Speaker, I am pursuing a line of questioning, for a reason.

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**The DEPUTY SPEAKER:** Yes, but if you could make sure that it relates to the six words in this clause, please.

**Mr P. PAPALIA:** It does, Madam Deputy Speaker, because we are amending the Criminal Code. The minister said in her second reading speech that this bill does three things, the second of which is that it amends the current counting rules for home burglary repeat offenders. So, it is a counting rule change. This is already a law. This is not making a new law. This is a specific change to the way in which the offence is counted. It has been predicated by a lot of people that the consequence of this change is that there will be a disproportionately large impact on Indigenous juveniles. I am asking the question about what research was done. In 2001, a specific study was done on the three-strikes mandatory sentencing laws in Western Australia. That study was entitled “Mandatory Sentencing in Western Australia & The Impact on Aboriginal Youth”. That is, as far as I know, the most recent specific study of the impact on Aboriginal juveniles of the three-strikes legislation and the mandatory sentencing associated with that legislation. That report states in part —

Inevitably, the greatest impact of Western Australia’s mandatory sentencing laws has been on juveniles and, in particular, Aboriginal juveniles. By 1999, research had indicated that 80% of juveniles dealt with under the laws were Aboriginal. In early 2000, the then government ‘corrected’ this figure to 74%. The recent Department of Justice *Review* affirms a figure of 81%. This means that four fifths of the three strikes case are drawn from less than one third of offenders appearing in the Children’s Court.

I do not imagine that much has changed with regard to those disproportionate representation statistics. I find it interesting that no analysis of the potential further disproportionate impact of this amendment to the Criminal Code has been engaged in by either the department, the minister’s office or the Attorney General’s office.

**Mrs L.M. HARVEY:** As I have said, burglary offences are not separated out at present into aggravated home burglary, aggravated dwelling burglary et cetera, but when we put all those burglary offences together, currently 79.63 per cent of the people who are incarcerated for burglary offences in the youth space are Indigenous. But, as I have said previously, we are looking at a range of initiatives to try to work with those young offenders on what are the causes of their entry into criminal offending and move them away from their offending behaviour, and that is where the government’s objectives and priorities are going to be. However, notwithstanding that, if young offenders and adult offenders are recidivists in this space, they will be subject to this legislation.

**Mr W.J. JOHNSTON:** Could the minister outline what diversion programs the government is instituting to get people away from offending?

**The DEPUTY SPEAKER:** Member for Cannington, I am really not sure that that relates to clause 3.

**Mr W.J. JOHNSTON:** Madam Deputy Speaker, the minister used that in her answer to the question on this clause. All I am doing is trying to get the minister to explain what she meant by her own comment. I cannot see how the minister’s comment was within standing orders and my question about her comment is outside standing orders, because all I am doing is asking the minister to clarify her answer.

**The DEPUTY SPEAKER:** Member, can you please direct your question to clause 3.

**Mr W.J. JOHNSTON:** Okay. In respect of clause 3, the minister explained that she does not know the effect on Indigenous people because she does not have the statistics available to her. However, she said that 79 per cent—which was a figure that my colleague the member for Warnbro largely agreed with—of juveniles were affected by the current arrangement for mandatory sentencing for home burglary. If we go back to the royal commission into black deaths in custody, it talked about ensuring that there was a law reform that would protect the interests of Indigenous people. The minister said that she is looking at the question of what is the cause for them—I do not remember the minister’s exact words—to go down the path of offending, and that the government has diversion programs in place. The minister is asking Parliament to make these amendments. Everybody, apart from the minister, has looked at the report of the royal commission into black deaths in custody. Given that the minister has not read the report of that royal commission, we are trying to establish what the minister is doing to adhere to the recommendations of that royal commission. The royal commission was very specific about trying to avoid jailing Indigenous Australians. That is one of the fundamental recommendations in the report. If the minister reads the report of that royal commission, she will see that that is what it says. I am trying to establish what the minister is doing to comply with the recommendations of the royal commission into black deaths in custody. The minister has raised the issue of diverting people from offending behaviour, and she has also raised diversion programs. I want to know what the government is doing to make sure that we do not have this very high rate of Indigenous imprisonment.

**Mrs L.M. HARVEY:** I have answered this question previously.

**Mr J.R. QUIGLEY:** I accept, of course, and understand the member’s answer given before, that she introduced this bill as the Minister for Police and that it was a central part of the Liberals’ campaign in the last election. I, of

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course, unquestionably accept that the government received a mandate for this legislation, which is why we are not opposing it; we never oppose the people's mandate. But when the honourable Premier announced the policy and said that there would be a new tranche of mandatory sentencing, he said that everybody in the community knows that some judges are not doing the right thing. Does the minister recall that?

**Mrs L.M. Harvey:** Member go on; this isn't Q&A. I want the member to get to his question.

**Mr J.R. QUIGLEY:** That is a question: Does the minister recall —

**Mrs L.M. Harvey:** Finish your question and sit down and I'll answer it.

**Mr J.R. QUIGLEY:** That is my question.

**Mrs L.M. HARVEY:** I think the announcement was made in February 2013. I cannot quote the actual specifics of what each individual said in that media release, but I have it in here. What I will say is that the community of Western Australia constantly expressed to us that the judiciary does not sentence consistent with its expectations and that is what this legislation is designed to address. We are introducing mandatory minimum terms because the community of Western Australia said that it wanted minimum sentences increased, longer sentences and more time behind bars for not only those who commit violent crimes, but also recidivist offenders. We listened to the community. The community told us what it wanted us to do and, as elected members, we are doing it, which is why our election commitment, in the form of this piece of legislation, is before the house.

**Mr J.R. QUIGLEY:** The minister has said here that some of the judges are not doing what the community wants.

**Mrs L.M. Harvey:** No, I said that community members have expressed to me in numerous forums their frustration that sentences are not consistent with their expectations. That is what I have said consistently for a number of years.

**Mr J.R. QUIGLEY:** That might be a community belief, but I am asking about the minister's belief, not the community's belief, as a minister of the state.

**Mrs L.M. Harvey:** My beliefs are irrelevant to this legislation. Obviously, I support the legislation; I am bringing it through the Parliament.

**Mr J.R. QUIGLEY:** Did I get that right? The minister's beliefs about this legislation are irrelevant. Do I understand that to be the minister's position?

**Mrs L.M. HARVEY:** I am really pleased to be here as Minister for Police in Western Australia bringing forward for debate in this Parliament a piece of legislation that we promised the community as an election commitment. I support the legislation. I agree 100 per cent with the sentiments of the community and victims who feel that offenders are not receiving sentences that correctly punish them as a consequence of their offending behaviour. That is why this legislation is before the house. I support the legislation 100 per cent. The member for Butler has heard me talk about it in numerous places. My views on this issue are well known and well canvassed.

**Mr J.R. QUIGLEY:** If I may, with your indulgence, Madam Deputy Speaker, just ascertain whether it is the minister's belief that some offenders are not receiving the appropriate punishment.

**The DEPUTY SPEAKER:** Member for Butler, I do not think this relates to clause 3. You are straying away from it.

**Mr J.R. QUIGLEY:** With respect —

**Mrs L.M. Harvey:** Yes.

**Mr J.R. QUIGLEY:** The answer is yes. Can the minister tell us please which judges are not imposing the correct sentences and which cases they involve?

**Mrs L.M. HARVEY:** I do not think it is appropriate in this house to canvass the rulings of individual judges and magistrates in any matter.

**Mr J.R. QUIGLEY:** This lacks integrity, does it not? The minister stood here and said that some people are not receiving the right sentences, but she will not tell us which judges or which cases evidence that. Will the minister tell us which cases at least evidence that people are not receiving the right sentences by the judiciary?

**Mr W.J. JOHNSTON:** Could the minister tell us how many cases are examples —

**Mr J.R. Quigley:** I didn't get —

**Mr W.J. JOHNSTON:** The minister does not have to answer; she is not prepared to answer. The member for Butler's question remains unanswered and given that it appears that the minister does not want to answer that

question, can she tell us how many sentences for offences have not met the community's expectations since she became the police minister?

**Mrs L.M. HARVEY:** When we researched sentencing for repeat home burglars and individual cases in which violent acts had been committed in the course of a home burglary, a number of cases stood out and I talked about them in my summing up of the second reading debate last night. As I said previously, it was a complex and convoluted process to extract the information. A range of judgements stood out as being insufficient, including the case of a 17-year-old offender who committed 114 offences, including 25 burglaries, of which 23 were in dwellings, and 12 aggravated burglaries in a six-year period. The first period of detention was imposed upon him for the fifteenth offence. So, there are cases there. As far as individual cases go, I am not like the member for Butler, because I do not believe in using parliamentary privilege to name individuals in a forum in which they do not have an opportunity to defend themselves. I would prefer to get on with debating clause 3, "Act amended", which states that this part amends the Criminal Code.

**Mr J.R. QUIGLEY:** In her second reading speech, did the minister not refer to three cases individually and did she not name them in correspondence to me?

**Mrs L.M. Harvey:** I think you know the answer to that because I just referred to my second reading speech.

**Mr J.R. QUIGLEY:** How can it be? The minister is not telling the truth and is lacking integrity because she was prepared to come into this chamber and identify three cases—Ugle, Thorn and Miller—and by identifying those three cases, she was happy to identify Mr Justice Pullin, Mr Justice Buss and Mr Justice Mazza of the Court of Appeal, and Mr Justice Steytler, Mr Justice Robert Smith and Her Honour Justice McLure. The minister was prepared to put all those names out in Parliament, was she not, by naming the cases? The Minister for Police said she had all these cases, but she will not tell us the cases so that the community can test, or be satisfied, that what she is saying is the truth. Is this a secret that the minister is going to keep from us?

**Mrs L.M. Harvey:** I have already answered the question, member for Butler.

**Mr J.R. QUIGLEY:** Is there a database of cases in Western Australia, that the community could look at, of all sentences to see whether the minister is telling this Parliament the truth?

**Mrs L.M. HARVEY:** The Director of Public Prosecutions' website has data on it for particular convictions and sentencing outcomes. People can access that information freely from the website.

**Mr J.R. QUIGLEY:** Thank you, minister; I have. I can assure the minister that I have printed every case and I will go through those section by section when we come to the substantive clauses of the bill. It is true, is it not, that they relate only to appeal cases—there is no sentencing at first instance? I do not want to put words in the Chief Justice's mouth, but it is a concern of the Chief Justice that the government will not fund the database, so no-one will know in Western Australia —

**The DEPUTY SPEAKER:** Member for Butler, we really are straying from clause 3 now. Please direct your question to the clause.

**Mr J.R. QUIGLEY:** I am; I am going to what the minister said. The Minister for Police said she knows all these cases and I want to ask: where are these cases? This is very important legislation; if I can just address Madam Deputy Speaker's concern.

**The DEPUTY SPEAKER:** Thank you.

**Mr J.R. QUIGLEY:** This legislation of course strikes at the separation of powers. This is the legislature telling the judiciary what they must do. There is no question that this legislation strikes at the constitutional arrangements of Western Australia. When I say that, we cherish an independent judiciary. I remember when the previous Labor government introduced laws concerning redistribution and one vote, one value, it was with confidence that the National Party and the Liberal Party ran down with the then Clerk of the Legislative Council to an independent judiciary to see whether the Labor laws were constitutional, and they were struck down because we had an independent judiciary. These laws strike at those constitutional arrangements. It is not unreasonable that we are looking for the evidentiary basis behind the policy. Each clause deals with individual offences. My questioning about what the government knows about sentencing is very relevant to this particular clause. Do not worry, the limited database that is available—it is a very limited database that is available—deals only with cases on appeal. For all the other sentences, there is no database available to the public. It may be available to the government, and it has come up with this policy —

**The DEPUTY SPEAKER:** Thank you, member for Butler. Direct your question to the minister.

**Mr J.R. QUIGLEY:** Thank you.

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Beyond the database of appeal cases only, which comprise a very small proportion of sentencing case law, does the Minister for Police or the government—the police might do this—have a database available to them of sentencing at first instance across jurisdictions?

**Mrs L.M. HARVEY:** I would like to go back to one of the comments that the member for Butler made previously, saying that this strikes at the heart of the Constitution et cetera. This is a Westminster system of government. In a Westminster system, Parliament makes the legislation. We make the laws; we pass the laws. The community of Western Australia, in a democratic society, elects us to pass legislation that it supports. That is the role of this Parliament. It is then the role of our law enforcement agencies, our judiciary and our court system to act within the parameters of the legislation that we, as elected members, agree on. I disagree with the member for Butler's assertion that this strikes at the heart of the Constitution. The role of the Parliament is to debate and pass legislation. That is what we are here for.

**Mr J.R. QUIGLEY:** That part of my speech was actually trying to convince Madam Deputy Speaker of the relevance of my question. But now I want to put the question again, because the minister did not address the question. I agree with the minister that on the DPP's website is a database of appeal cases only, which comprise a very small percentile of sentencing case law. Does the government, the police department or any other government agency have a database of the sentences passed at first instance across several jurisdictions?

**Mrs L.M. HARVEY:** My understanding is that that information is available on the Department of the Attorney General's website. It is not linked back to individual judicial officers; it is grouped in categories of offences and then sentencing outcomes in the categories of offences. That is the way that the data is collected. It does not identify individual cases or names of victims. It is merely a database that collects the type of offence and the type of sentence that the offender has been meted out as a consequence of their offending.

**Mr J.R. QUIGLEY:** Is the minister saying that available on the Department of the Attorney General's website is a case-by-case database of sentencing, with the names deleted?

**Mrs L.M. HARVEY:** No, that is not what I said.

**Mr J.R. Quigley:** I am sorry; perhaps you could help me.

**Mrs L.M. HARVEY:** I said that the offences are grouped in categories and the sentencing outcomes are collated as part of a group database. As I understand it, it is not a case-by-case scenario. I would need to go back to the Department of the Attorney General's website. I am actually at a loss to understand what this has to do with clause 3, which reads —

### 3. Act amended

This Part amends *The Criminal Code*.

**Mr J.R. QUIGLEY:** With respect, I am in the hands of the Deputy Speaker. I have made a submission on that and my question is relevant. I have not been overruled on the question of relevance. I am asking for the evidentiary basis that sits behind the proposed amendment. I have not been overruled on that. The house's attention will soon be drawn to the standing orders. Perhaps at three o'clock the Minister for Police will be able to further explain this database to us because she will have some opportunity to go back to that database and tell us more about it—which I do not know about—in terms of trying to identify the particular inadequacies in the sentencing regime. I accept that the minister can say, "We're not going to the detail. This is popular and we're doing it because it's popular." That is the truth, is it not? The Minister for Police is saying, "I don't know the details of any database and I don't know the details of individual sentences." I accept the Minister for Police is a good politician in terms of sensing which way the wind is blowing. What the government is doing is popular, is it not, but the Minister for Police does not know the detail. The minister is not relying upon the detail, she is relying more on public sentiment. Would that be a fair assessment of the minister's position?

**Mrs L.M. HARVEY:** As I said previously—the member for Butler has made this comment—the government took this policy to the community, the community elected us, giving us a mandate to implement our election commitments, and we intend to implement them. That is what this is about.

Debate interrupted, pursuant to standing orders.

[Continued on page 1039.]