



Hon Simon O'Brien MLC
Chairman
Standing Committee on Environment and Public Affairs
Parliament House
Perth WA 6000

Dear Hon Simon O'Brien MLC

RE: PETITION NO 84 – CRIMINAL LAW AMENDMENT (HOME BURGLARY AND OTHER OFFENCES BILL) 2014 (The Bill)

Thank you for the opportunity to provide a written submission regarding the matters put forward in the petition, which I tabled on behalf of the Petitioners. The matter has not been taken to the Parliamentary Commissioner for Administrative Investigations (Ombudsman).

In Western Australia, under successive governments, we have a situation in which people have been imprisoned, particularly Indigenous Western Australians, at an unprecedented rate. When young people enter the prison system, they come out more likely to reoffend after having learned a lot of behavioural and other useful information from other people in prison, especially older offenders. The rate of recidivism is very high for young offenders and particularly for Indigenous offenders. Thus, an evidence-based approach is desperately needed in the area of mandatory sentencing, juvenile incarceration and justice reinvestment.

I strongly support the Petitioner and urge the Western Australian Legislative Council to not pass the Bill in its current form, and at the very least, undertake a Committee inquiry. The policy of this Bill must be subject to the scrutiny of the Committee. This is a highly political Bill that will not achieve the aims stated in the second reading speech. The intention is to try to reduce crimes within the home, and everyone is unanimous in condemning that, but this Bill will not achieve the desired outcome. During the Parliamentary Briefing I received on the Bill, I was disturbed to find that the amendments were not based on research and that data records were not kept, bringing into question what evidence was used to inform this policy or whether the government is just fulfilling an election commitment.

I remind this government that mandatory sentencing of children contravenes the Convention on the Rights of the Child, in particular Article 37(b), which states:

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention and imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

PORTFOLIO AREAS:

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By obliging the court to impose a mandatory minimum sentence, you are removing the court's discretion and its ability to properly reflect the level of seriousness of the particular offence in the sentencing option and the length of the term opposed. For example, entering into a house by an open door and taking food from the fridge may be subject to the same penalty as entering a house and causing a lot of damage or removal of property.

The Bill seeks to make some convictions, for home burglaries committed before the commencement date, relevant convictions. This is regardless of whether or not they were recorded before or after the commencement date of the Bill. This may be designed to fast-track young offenders to becoming 'third strikers'. This will have an enormous impact for Corrective Services, and it is my understanding that Banksia Hill Detention Centre will need an additional 130 beds for juvenile detainees within two years of the Bill being passed.

Therefore, I ask the Committee to assess the following concerns:

1. The risk the legislation poses to children, especially the disproportionate impact on the incarceration rates of Indigenous youth.
2. The changed counting rules for determining 'repeat offender' status, especially for those aged 16 and 17 years.
3. The mandatory minimum sentences for aggravated home burglary, especially for an accomplice to an offence of grievous bodily harm.
4. The broader concerns about the use of mandatory sentencing, especially as research indicates it does not deter crime, reduce recidivism or promote rehabilitation.

I stress the need for more investment into early intervention, prevention and diversion and a justice reinvestment approach in Western Australia, which experience internationally shows is far more socially effective and cost efficient at reducing crime and imprisonment than tougher and more restrictive sentencing options. Given the government's own stated commitment to reducing the rates of Aboriginal youth incarceration, it seems incomprehensible that they would pursue a bill that will only compound the problem.

Yours sincerely

The Hon Robin Chapple MLC
Member for the Mining and Pastoral Region
03 July 2015

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