

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

SECOND READING SPEECH

HON MICHAEL MISCHIN MLC

ATTORNEY GENERAL

I move that the Bill be now read a second time.

This Bill implements the Government's commitments at the time of the 2013 election to amend the law relating to the punishment of home burglary and of serious offences committed in the course of home invasions.

The offence of burglary of a habitation, under sections 401(1)(b) and (2)(b) of the *Criminal Code*, carries a penalty of up to 18 years' imprisonment. The burglary of a habitation in circumstances of aggravation, under sections 401(1)(a) and (2)(a) of the *Criminal Code*, is punishable by up to 20 years' imprisonment. A circumstance of aggravation includes circumstances in which the offender is or pretends to be armed with a dangerous or offensive weapon, where the offender is in company with another person or persons, where the offender does bodily harm to or threatens to kill or injure any person, or where the offender knows or ought to have known that there was another person in the habitation.

Although, fortunately, not all burglaries of homes result in harm to an occupant, it is a matter of increasing concern among members of the community that they may be harmed.

A burglary is a traumatic experience for a homeowner. People regard their home as their sanctuary and look to it to be a place of security and safety for themselves and their families and loved ones. For a homeowner to find that that sanctuary has been violated – that strangers with malicious motives have entered uninvited and invaded their privacy – is very distressing and can unsettle people to the point where they feel that they have to move home, at considerable expense both financially and emotionally. Those without the ability to move, have to live with insecurity and often fear. Those who have been present at home when their home is invaded are at risk of assault and harm, even sexual assault, and of being maimed or killed.

Fortunately such instances are uncommon. Nevertheless, the community views with disquiet the frequency of home burglaries and is understandably alarmed when offences of violence occur in the course of those burglaries. Citizens are concerned that those who perpetrate such outrages appear not to be punished with sufficient severity by the courts.

As mentioned, an aggravated home burglary is punishable by 20 years' imprisonment, making it an offence that Parliament, since at least 1996, has identified as one of the most serious criminal offences in Western Australia, comparable at the time with arson and manslaughter. Only armed robbery and murder carried greater penalties.

Unfortunately, even recidivist burglars have never been punished with more than a fraction of the maximum penalties prescribed by Parliament.

It is true that if an offence is committed in the course of a burglary, that offender can be charged and punished separately as appropriate, and cumulatively upon any sentence for the burglary itself, especially if the offence is one of violence.

However, it is arguable that the punishments imposed by the courts for home burglaries and for offences committed in the course of home burglaries, are limited as they are by long-

standing court established sentencing tariffs and precedents, and Court of Appeal judgments, and are out of step with community expectations.

By way of example, I refer firstly to a case where an offender with a lengthy record broke into a house after disconnecting the victim's home telephone. He entered the victim's bedroom where she was asleep with her four year old daughter and sexually assaulted the victim while her daughter slept beside her. The burglary was punishable by 14 years imprisonment, and the sexual assault punishable by 20 years imprisonment. He was sentenced to seven and a half years.

In a second example, the offender smashed a window to gain entry to a unit in a senior citizens complex and confronted the resident, a 78 year old woman. He sexually assaulted her, and was charged with six separate counts of aggravated sexual penetration. The burglary and each count of sexual penetration were punishable by 20 years imprisonment. The offender received 11 years jail.

In another instance, an offender broke into a home unit armed with a screwdriver and an iron bar, with his face concealed by a pillow cover. He threatened a middle aged victim and raped her. Following an appeal, he received a total effective sentence of six years imprisonment.

The community is also understandably confused by and disturbed at how the courts deal with recidivist burglars.

In 1996, the *Criminal Code* was amended to introduce what is commonly referred to as a 'three strikes' rule. Reflecting community dismay that burglars were receiving non-custodial sentences from the courts notwithstanding that they continued to offend, section 400 was amended to introduce the concept of a "repeat offender". A repeat offender was, in essence, a person who committed and was convicted of the burglary of a home and, subsequent to that conviction, again committed and was convicted of a home burglary. The effect of this is that pursuant to section 401(4) of the *Criminal Code*, upon a third conviction for such an offence, the court must sentence the offender to at least 12 months imprisonment if an adult or, if the offender is a young person within the meaning of the *Young Offenders Act 1994*, to at least 12 months imprisonment or detention.

However, this leads to what the community with justification regards as absurdities. It can mean that an offender can have committed dozens of home burglary offences but, because they do not conform to the statutory counting sequence, they can be counted as only one 'strike'. By way of one example, one 17 year old offender had committed 114 offences including 25 burglaries, 23 in dwellings with 12 being aggravated, in a six year period. The first period of detention was imposed upon sentencing for the fifteenth such offence. The offender's record indicates that the bulk of the offences were committed whilst the offender was subject to non-custodial orders.

The counting system in section 400 is based on a principle known as 'Lord Coke's rule', and it is a means of calculating whether a person is a second or third, etcetera, offender for most purposes. However, in the case of volume crimes such as home burglary, instances of multiple offences with multiple convictions, where they do not result in imprisonment and are counted as only one offence for the purposes of the 'three strikes' rule; the counting system

fails to fully reflect what the public regards as 'common sense' and gives rise to a loss of confidence in the administration of justice.

Although in many areas the crime rate has declined over the past four years, the volume of burglaries committed in Western Australia remains at an unacceptably high level. In the 2012/13 financial year, there were 27,407 home burglaries reported in Western Australia. Many of these are committed by repeat offenders.

According to the 2014 Report on Government Services, WA had the second highest rate of estimated victims for break-in – 4,472 for every 100,000 households. The national average was 2,873 per 100,000 households. WA also had the second highest rate of estimated victims for attempted break-ins (3,442 per 100,000 households). The national average was 2,261 per 100,000 households.

Across all levels of adult courts, just 49 per cent of people convicted of home burglaries and aggravated burglary offences were sentenced to a term of imprisonment in 2012, with an average term of 15 months.

For 16 and 17 year olds, the percentage is even less – just 25 per cent of offenders aged between 16 and 18 years old convicted of home burglaries or aggravated burglaries received a term of detention or imprisonment in 2012, with an average term of nine months incarceration.

Although our overall crime rate has been decreasing since this Government came to office, it is plain that home burglaries, particularly in circumstances of aggravation and in the course of which violence may be committed, are a major source of worry to the community. There is a perception that burglars, particularly recidivists and those who do harm to occupants of the homes they invade are not being sufficiently punished by the courts. It is this that the current Bill seeks to address.

The Bill addresses these issues by making three changes to the manner in which home burglaries and related offences are dealt with.

Firstly, it introduces mandatory minimum terms of imprisonment for those who commit serious violent and sexual offences in the course of an aggravated home burglary. Secondly, it amends the current counting rules for home burglary repeat offenders. Thirdly, it increases the minimum term of imprisonment for third strike repeat adult offenders from 12 months to two years.

In making these amendments, the Government is determined to ensure that burglars who commit numerous home invasions, which can involve serious violent offences, are incarcerated for longer periods; to deter such offenders, to ensure that such offenders are kept out of circulation longer, and to reflect community abhorrence of such offending.

Dealing with each in turn, first the Bill stipulates in the *Criminal Code* new mandatory minimum sentences for serious offences of physical or sexual violence committed in the course of an aggravated home burglary. These serious offences include murder, manslaughter, attempted unlawful killing, aggravated grievous bodily harm, aggravated

sexual penetration without consent and sexual offences against a child. For an adult offender, the Bill provides for a minimum sentence of 75 per cent of the statutory maximum term of imprisonment for each of those serious offences. In the case of offences carrying a maximum, but not mandatory, term of life imprisonment, the Bill prescribes a minimum sentence of 15 years. For a juvenile offender, which is a person between 16 and 18 years of age, the Bill provides for a minimum sentence of three years' imprisonment or detention for each of those serious offences. The Bill does not impose any minimum sentences on offenders under 16 years of age.

The Bill also amends the *Sentencing Act 1995* to provide that adult offenders who commit murder in the course of an aggravated home burglary and who are sentenced to life imprisonment, will serve a minimum non-parole period of 15 years imprisonment.

As mentioned, currently home burglary repeat offenders are liable for a mandatory minimum sentence of 12 months imprisonment or detention. To address the counting rule issue, the Bill amends the *Criminal Code* to provide that a "repeat offender" is a person who has three "relevant convictions" or strikes in respect of burglaries committed on different days. The Bill proposes various rules to determine when a person's conviction for a home burglary constitutes a relevant conviction. If the home burglary was committed before the commencement of the proposed amendments, the current counting rules under the *Code* will continue to apply. New rules will apply if the home burglary was committed after the commencement of the amendments. In the case of an adult, any home burglary offence they commit will be regarded as a relevant conviction. If the person was a juvenile (namely a person between 16 and 18 years of age) when they commit the home burglary, the conviction will be regarded as a relevant conviction if it is their first for a home burglary, or if at the time of the home burglary, the person already had a conviction for a previous home burglary. If the person was under 16 years of age when the offence was committed, the current counting rules under the *Code* will continue to apply.

The Bill departs from Lord Coke's rule as reflected in section 400 by specifying that each of an offender's relevant convictions is to be counted, regardless of whether the home burglary was committed before or after the date of any previous relevant conviction.

The Bill does, however, insert an exemption for historical burglary offences. This provision stipulates that where an offender has completed the sentence for the second relevant conviction, and is later convicted of a home burglary offence ("the current offence") that predates the second conviction's offence, the court has a discretion not to count the current offence as a third relevant conviction if it considers that there are exceptional circumstances. The court is obliged to provide written reasons when finding that exceptional circumstances exist. Although not stipulating what those exceptional circumstances should be, the Government expects a court may consider such factors as the rehabilitation of the offender, the offender's employment prospects and the length of time during which the offender has not offended.

Lastly, the *Criminal Code* prescribes that a 'third strike' offender must be sentenced to at least 12 months imprisonment. To better reflect community expectations of the punishment of home burglary, the Bill increases the mandatory minimum sentence of imprisonment for adult home burglary repeat offenders, who commit a home burglary after the commencement of the

Bill, from 12 months to two years. The mandatory minimum sentence for persons under 18 years of age will remain at 12 months.

The Government notes there are issues with elements of the *Young Offenders Act 1994* with respect to provisions dealing with repeat juvenile burglars. However, the Government is presently undertaking a comprehensive review of the juvenile justice regime and has chosen to defer any legislative action in respect of juveniles under the age of 16 years until that review has been completed. The Minister of Corrective Services will seek public comment on proposals to that Act in the second half of this year.

One further relatively minor but significant change proposed by the Bill is to provide a clear distinction in the *Criminal Code* between aggravated home burglaries and aggravated burglaries of places other than dwellings. Presently, the *Code* creates a single offence of aggravated burglary. This is convenient from the point of view of charging, but presents difficulties in data collection, in particular in readily determining from police, the Director of Public Prosecutions, and from court records how many aggravated burglaries are committed upon habitations as opposed to other premises. This amendment will also assist in measuring the effectiveness of the other proposed amendments in the Bill.

The general rules in relation to parole eligibility still apply under this Bill.

To determine the efficacy of the proposed reforms, the Bill requires the Minister responsible for this legislation to carry out a review of the operation and effectiveness of the proposed amendments in the Bill after they have been in operation for five years.

Pursuant to Standing Order 126(1), I advise that this Bill is not a uniform legislation Bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the State is a party. Nor does the Bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the Commonwealth.

I commend the Bill to the House and table the explanatory memorandum.