

Dr Janet Woollard; Mr Tony O'Gorman; Mr Mike Board; Speaker; Mr Tony McRae; Mr John Quigley; Mrs Michelle Roberts; The Acting Speaker (Mr A.D. McRae); Ms Katie Hodson-Thomas; Mr John Kobelke; Acting Speaker

ROAD TRAFFIC AMENDMENT (IMPOUNDING AND CONFISCATION OF VEHICLES) BILL 2004

Second Reading

Resumed from an earlier stage of the sitting.

DR J.M. WOOLLARD (Alfred Cove) [2.48 pm]: I support the Bill. I corresponded with the minister approximately 12 months ago about the activities in my constituency. I was a member of Melville Safer WA when it was brought to my attention that very dangerous driving was occurring in particular areas of Melville. At weekends, in particular, drivers would be hooning around Point Walter, the Applecross foreshore, near the primary school, near Garden City Shopping Centre, and near Melville Recreational Centre. Many members of the community have been waiting for a Bill like this to be introduced to stop some of the dangerous driving that is occurring. Only this week I was called by someone who now thinks twice about going out in the evening, because some drivers are hooning around her area from 9.30 pm until 2.00 am. She does not want to be coming home when the roads are unsafe because of that dangerous driving.

I hope that this Bill will have the effect of decreasing the speed of some of the traffic in suburbs and on country roads, because too many deaths are related to reckless driving. I am pleased that the Bill has exemptions for police and ambulance emergency vehicles. The member for Wagin put forward a very good suggestion; that is, that when cars are impounded, a roadworthiness test should be conducted on them. As I have said, many people in my community are very pleased that this Bill has finally been introduced to the House. The minister is to be congratulated. The Bill will give support to our local police. In fact, the police from both Murdoch and Palmyra are part of the Melville Safer WA committee. I am sure that they will be pleased to see this Bill go through this House. I hope it will go through the other House very quickly. I hope that it will stop some of the antisocial behaviour that has been occurring on our roads for a long time. I see in the legislation that in some instances people will get demerit points; in other instances a person's drivers licence will be withheld, and that person will have to take the test again. I am pleased with the definition of "circumstances of aggravation" in clause 12 of the Bill. I believe that in many ways this will help the police in carrying out their duties with reckless drivers. Once again, I congratulate the Government for bringing this Bill to the House.

MR A.P. O'GORMAN (Joondalup) [2.51 pm]: I also support this Bill and congratulate the minister for bringing it to the House. In the past few months in discussions with my constituents, particularly in the suburb of Connolly, this issue has come to my attention a number of times. It involves not only young people, but also many people across all age groups. However, young people in particular are an issue. People who are hooning, as it is called, doing burnouts and racing each other on the streets, thereby raising a lot of smoke and noise etc, cause a lot of disturbance to the residents of Connolly. I have undertaken to refer that matter to the local police. In fact, I have arranged for the local police to talk to those people and explain this Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill. That will take place next month, I hope.

It is good legislation, and it will serve as a strong deterrent to such behaviour, along with the measures that the Gallop Government has put in place to deter crime during its period in government. This is not a new thing that has arisen in the past two or three years. It has been around for many years. Indeed, when I lived in Craigie in the early 1980s, one of my pastimes was to sit on the front porch and watch the hooners as they tried to wipe themselves out on the streets.

Point of Order

Mr M.F. BOARD: I raise a point of order because I know the Hansard reporter is struggling to hear the member. With the noise from the conversations going on in the Chamber, she cannot record what is being said. Is it possible to resolve that issue for the Hansard reporter?

The SPEAKER: Those who are talking can talk somewhere else.

Debate Resumed

Mr A.P. O'GORMAN: Obviously, my voice does not seem to be carrying too well. I was saying that in the early 1980s I lived in Camberwarra Drive in Craigie. One of the regular pastimes was watching these hooners, as they were called, racing around the streets. Interestingly enough, this morning I opened my local paper and saw an article headed "Residents up in arms". It states -

Residents in Spinaway Street, Craigie, are fed up with speeding, reckless drivers in their street.

Resident Kelvin Maybury said residents in the street were exposed regularly to young drivers who used the street as a drag strip and a burnout pad.

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“We are forced to seal up our homes while we sleep or risk being nauseated by the lingering stench of burning rubber that takes hours to dissipate if it gets indoors,” he said.

That appeared in today's newspaper. When I lived in that suburb over 20 years ago, I lived about 100 metres around the corner from that street, and we had that issue back then. I am glad that the Minister for Police has finally taken action and that the Government is sending a strong message to the communities of Craigie and Connolly and to the electorate of Joondalup that we will not tolerate this sort of behaviour, and that the cars of people who engage in that type of inappropriate behaviour will be confiscated. I support the Bill.

MR A.D. McRAE (Riverton) [2.54 pm]: I also support this legislation. I do so because the experiences in a number of parts of my electorate are similar to those that many members have talked about today and during the debate on this legislation. Although I understand that this Bill is about more than just the hoon provisions, that is the focus. It is clearly the most difficult social conflict that is going on in our electorates, when young men, in particular, with high-powered cars demonstrate how much rubber they can put onto the bitumen in a given space and whether they can put patterns on the road when they do it.

At one level, we have also heard people admit that they enjoy driving cars fast. They do that on speedways and in controlled racing situations. It is a pity that many of these hoons do not take the opportunity to be involved in more structured car-racing activities. We have those activities so that people can experience and enjoy them. It is not something that absolutely thrills me or gets me all that excited. However, I accept that some people find it exciting and want to go to those types of events.

Mr R.F. Johnson: I would have thought you would be easily excited.

Mr A.D. McRAE: Not as easily excited as the member for Hillarys obviously is about many things. My excitement probably tends to be more sophisticated than the member for Hillarys'.

Mr R.F. Johnson: What a snob. I like the simple things in life.

Mr A.D. McRAE: No, it is not about snobbery. It is just because I try to engage my brain in things, rather than the simplistic reactions that the member gets involved with. I was also interested to note that, in addition to what might be referred to as the hoon clauses, this legislation makes provision to broaden the base for the application of sanctions against those people who drive with an excessive blood alcohol content or who drive while they are disqualified, and a range of other matters. There will be much more serious penalties for people found to be in breach of those provisions of the legislation.

It is appropriate, the day after the World Health Organisation declared yesterday's World Health Day as being targeted at driving safely and road safety, that we contemplate the kind of carnage that results from sometimes just thoughtlessness, but on many occasions out-and-out ignorance, stupidity and recklessness, which puts drivers' lives and bodies at risk, as well as that of their passengers and other people in the community. This Parliament must send a clear message to the community about that kind of carnage and imposition on people, particularly to those who continue to disregard acceptable community standards and what we clearly know are reasonable standards of safety.

I was listening to the radio on my way to Parliament this morning. One of the hosts on the local ABC radio station was talking to one of the assistant commissioners of police in Western Australia. The assistant commissioner referred to the propensity for young men, in particular, to ignore the rules of law applying to road use and traffic safety, to the point that they are causing real damage to people in the community. That assistant commissioner commented that the first recorded motor vehicle traffic accident in Western Australia was in 1896. It involved a young man who had just acquired a new car and was showing it off and lairising on the roads in front of his friends. Instead of complying with the four-mile-an-hour - I repeat, four-mile-an-hour - speed limit that applied on Perth roads in 1896, the driver was recorded as having reached speeds of eight miles an hour. This resulted in a collision with and the death of a pedestrian. According to the assistant police commissioner, the first recorded motor vehicle traffic accident in Western Australia resulted from excessive speed; that is, speed beyond that which had been set as appropriate. We might think that is funny now because it is a matter of four miles an hour, but according to the conditions of the day, that speed limit was absolutely right. The motor vehicle probably weighed two to three tonnes, had a four to six-horsepower motor and reached speeds of eight miles an hour. It would have been very difficult to control, and would have had braking systems that were wholly inadequate by today's standards. The misuse of that vehicle and breach of the legally set speed limit for motor vehicles of the day resulted in the death of a pedestrian. Nothing has changed. Excessive speed kills. That must be the message that this Parliament sends to the community, and particularly to young men. Seventeen to 24-year-old men are involved in nearly 40 per cent of all road deaths in this State. The message from 1896 to 2004 is exactly the same. Our will, intent and action to make roads safer must not be diminished

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by that 108 years of experience. Indeed, it should be a lesson to us that we need to continue the process. It is young people who are vulnerable to accidents and likely to cause personal and property damage and the injury, death and disability of others. We need education, of course, but we also need laws that will clearly communicate to young people that if those laws are breached, their toys will be taken away. It is as simple as that. We must reduce the message to that. I wholeheartedly endorse this legislation as a clear message that those laws must be obeyed and that they exist for the safety of everyone in the community.

MR J.R. QUIGLEY (Innaloo) [3.02 pm]: I both support this legislation and congratulate the Government on its introduction. Perhaps no electorate in Western Australia has been more adversely affected by hoon conduct than the electorate I currently represent, Innaloo. I previously approached my Liberal Party predecessors, Ray Young and Mr Strickland - your predecessor, of course, Mr Speaker - about the endemic problems on the Scarborough beachfront, with its large car parks, alcohol outlets and propensity to attract testosterone-charged males on Friday nights and Sunday afternoons. Over the years, the City of Stirling and the Police Service have taken a number of steps to stop this behaviour on the Scarborough beachfront, where on some Sundays up to 100 vehicles would gather, oil would be poured on the road and the hoon behaviour would start. However, it did not matter how many police were sent to the beachfront. It did not worry those people a whit if they got booked. That is because when people are young, they do not think through the consequences of their actions. I know this from my experience as a solicitor. So often I would see clients with a charge of dangerous or reckless driving, and the first thing they would want to know was for how long it could be delayed. As a solicitor, I was bound to say if the offender pleaded not guilty, the trial would be listed for nine months hence. In nine months the offender would come back with another ruse to further adjourn the matter. There is no immediate sanction for the behaviour of these people; that is, to mark their behaviour in a way that will cause them to cease. This legislation has been enacted in Queensland, and I understand from a visit to the Gold Coast last year that it has been successful.

I recount to the Chamber an incident that first occurred before summer and was repeated on three occasions during summer. The Reserve Street car park in Scarborough is a largely unused multistorey car park that the youths use as a multistorey grandstand. Gallons of oil were poured on the part of Reserve Street that is a hill sloping from West Coast Highway to The Esplanade and, one after another, the vehicles came up that hill doing burnouts. Adjacent to this is Observation Rise, which has a lot of residents. Of course, many pedestrians had to walk through that dangerous bedlam to get to the beach. Some motorists were booked, but they were back there 10 days later. They did not return to that car park but went to the car park just north of Observation Rise. There was no cessation of the conduct, although the culprits could be easily identified. Perhaps it is that they have no licence to lose; perhaps they do not give a fig; or perhaps they think they can keep rolling the consequences of their conduct so far into the future that it will not have an immediate impact on their lives. From my experience in criminal law, the hoons do not care what impact they have on other people's lives. They are selfish and care about only the impact on their lives, whether it be by way of arrest or losing their job. Their concern is only their selfish little world and not the social disorder they are wreaking upon the electorate I currently represent.

Surprisingly, the week before last I went to the Mindarie residents and progress association meeting. I thought I would go and have a look at that area.

Mr C.J. Barnett: Are you neglecting your electorate and your constituents?

Mr J.R. QUIGLEY: No; I was casting my interests further afield to see what had been happening there. Surprisingly, at that progress association meeting I learnt that the same problem was occurring in a Mindarie car park. I happened to mention to the members of that progress association that I could promise them that this Government would introduce anti-hoon legislation that would result in vehicles being seized on the spot. With this legislation, the one thing that these hoons cherish - their ability to take their mates home in their flash cars - will be denied them. Instead, they will be looking for buses. I applaud the minister and the Government for the introduction of this legislation. It will be a great benefit to the community I represent.

Mr C.J. Barnett: Which community is that?

Mr J.R. QUIGLEY: Innaloo, Mindarie, Western Australia - the whole trip.

MRS M.H. ROBERTS (Midland - Minister for Police and Emergency Services) [3.08 pm]: So many members on both sides of the House, including Independent and National Party members, have spoken on this Bill that it almost needs to be carried by acclamation! It is great that a Bill like this has support from every group in the Parliament. The Labor Party, the Liberal Party, the National Party and the Independents have all signified their support for this Bill. I think it is very good legislation. I am hopeful that it will have a very positive impact on the community. I know that similar legislation in Queensland is working well and has been embraced by the community. I first spoke to the then Minister for Police and Corrective Services in Queensland, Mr Tony

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McGrady, the member for Mount Isa, last August - although it may have been earlier than that - about the success of that legislation. I am very pleased that we have been able to introduce this legislation here, and hopefully we can do something to alleviate the needless trouble that people in various parts of the metropolitan and country areas have had to put up with. Prominent incidents have occurred at the Scarborough beachfront. We have also heard reports of incidents in Willagee and country areas. This legislation should do something to address that behaviour. The member for Carine highlighted the fact that in Queensland, where similar legislation is in place, although a lot of cars are caught for the first time and impounded for 48 hours, very few cars are caught for the second time and incur a three-month confiscation. At this time I think only one car in Queensland has been confiscated and sold under the legislation. That indicates that the legislation is having the desired effect. We do not want to punish people in the community gratuitously. We want to alter their behaviour.

Many members made very positive suggestions about how facilities could be made available to enable young people to perhaps get some of their revhead tendencies out of their system by engaging in these activities in an organised and safe environment. I thank the member for Carine for her contribution. The member raised a number of issues and signalled that she might take up some of them during consideration in detail. One of the questions that the member asked me directly was whether a person who had incurred a Multanova fine for driving at 45 kilometres over the speed limit would automatically be charged with reckless driving. I am advised by the police advisers that that would not be automatic, and that a notice might go out asking people to explain, or there might be some correspondence with the Multanova operator as to road conditions, the number of cars on the roads, whether it was near a school, and other factors, and those factors would be taken into account.

I also thank the members for Girrawheen, Hillarys, Ballajura, Warren-Blackwood, Wagin, Wanneroo, Geraldton, Roe, Greenough, Alfred Cove, Joondalup, Riverton and Innaloo for their contributions today. Those members have been very supportive of this legislation. I hope the legislation will not let people down. Sadly, it will not be a panacea for every problem involving hooners or hoon drivers, but it will be a significant start. One of the benefits of this legislation is that the remedy will be swift. Often when it comes to penalties for road safety matters, be it for speeding, drink-driving, failing to stop at a stop sign, or whatever, the justice system is very slow. The offender may get an infringement notice in the mail at some stage, and a court date at some later stage, and eventually the penalty is applied. This legislation will allow for the immediate confiscation of a vehicle from an offender. That will be a good thing, because the offender will get the message then and there, on the spot.

The member for Wagin raised a number of interesting questions. He asked about the cost in country areas of getting the vehicles back to where they need to be stored, or back to a police station or the like, and he gave the example of a vehicle that might be 80 kilometres from a police station. I have been advised that in country areas police will be rather keen to introduce some commonsense, bearing in mind that these are not cars that need to be towed for any mechanical reason, so there is no reason that these cars cannot be driven. It may be that a police officer will simply drive the car back to where it needs to be stored or, alternatively, come to an arrangement whereby the owner of the car will drive the vehicle to where it needs to go, either with or without a police escort. I am not sure of the detail, but I am told the Police Service will use a commonsense approach. I understand that the Police Service is considering setting fees for towing, and that while there may be a difference between the towing fees charged in the city and in country areas, the difference is not likely to be much. We do not expect that any undue hardship will be caused to people in country areas because of this Bill. It has been suggested to me that in many instances in country areas it will not be practical or necessary to use a tow truck service. My understanding is that there will be a standard fee to cover the cost of impounding the vehicle, and that people in country areas will not be penalised unduly.

I am mindful of the time and date. I am also mindful of the fact that we have had some very good support for this legislation. I anticipate that we will now move into consideration in detail; and, if there are any outstanding issues, I will be more than happy to address them at that time. I thank all parties and members of this House for their support of this legislation. I hope that it works on behalf of the whole community.

Question put and passed.

Bill read a second time.

Consideration in Detail

The ACTING SPEAKER (Mr A.D. McRae): I note that there are two amendments on the Notice Paper in the name of the member for Carine. However, subsequent to that, two agreed amendments have been proposed, and they can be found on a separate sheet of paper that is available from the Chamber staff. I assume that means that we will not be proceeding with the amendments on the Notice Paper.

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Ms K. HODSON-THOMAS: Does that mean that I will need to withdraw my amendments?

The ACTING SPEAKER: No. I am just letting members know about the discussion that has taken place.

Clauses 1 to 3 put and passed.

Clause 4: Section 5 amended -

Ms K. HODSON-THOMAS: This clause seeks to amend section 5 of the Road Traffic Act by inserting a proposed new subsection (6), which states -

For the purposes of this Act, a person reasonably suspects that something is the case at a relevant time . . .

Is "a person" referring to the police?

Mrs M.H. Roberts: Yes.

Ms K. HODSON-THOMAS: Is that referring to a circumstance of aggravation; that is, the police reasonably suspect that the offender who is about to be charged and have his vehicle confiscated will become aggravated?

Mrs M.H. Roberts: The only section of the Act where that will apply is where there is that circumstance of aggravation. The member is right in her assertion.

Clause put and passed.

Clauses 5 to 6 put and passed.

Clause 7: Section 51 amended -

Ms K. HODSON-THOMAS: Proposed section 62A refers to causing excessive noise or smoke, which will attract a penalty of 12 penalty units. If a probationary driver is charged with an offence under proposed section 62A, causing excessive noise or smoke, will that mean an instant disqualification of licence?

Mrs M.H. ROBERTS: It would not be an instant suspension of licence, but, upon conviction, that person's licence would be cancelled. As a consequence of this provision, that person would have to reapply for his or her licence.

Clause put and passed.

Clauses 8 to 10 put and passed.

Clause 11: Section 74 inserted -

Ms K. HODSON-THOMAS: Proposed section 74(4) states -

A person who, under this section, has a right to be heard in proceedings may be represented by any person he or she authorises for that purpose.

I assume that relates to the owner of the vehicle?

Mrs M.H. Roberts: No.

Ms K. HODSON-THOMAS: To whom does that refer?

Mrs M.H. ROBERTS: The Commissioner of Police and the Director General of the Department for Planning and Infrastructure have the right to be heard; and those people do have the right to delegate to their officers.

Clause put and passed.

Clause 12: Sections 78A and 78B replaced with Division 4 in Part V -

Mrs M.H. ROBERTS: I move -

Page 14, after line 32 - To insert the following -

- (2) Subsection (1) does not operate to prevent proceeds from the sale or disposal of a confiscated vehicle from being paid in accordance with section 80J(7).

The member for Carine raised a question about what would happen where a finance company owned a vehicle. This issue had been raised in earlier discussions. I had thought this was catered for in the legislation before the House, but upon closer scrutiny it appeared that the clauses were not as anticipated. I sought clarification on how the Bill presented to the House compared with the Queensland legislation and what would occur should the vehicle involved be part of a hire purchase agreement or belong to a finance company. As I understand it, the

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situation that exists in Queensland is that if they are looking at the final confiscation and sale of a vehicle, the amount owed to the hire purchase company or the finance company is paid out first and that which remains goes to the Crown. In the draft Bill that we introduced, the money was going to the Crown after other payments were taken out, and there was no remedy for the finance company or the hire purchase company. We have rectified that with this amendment, so that what will apply in Western Australia is similar to that which applies in Queensland. If a vehicle is sold, the money owed to the finance company or the hire purchase company will be paid to them by the Commissioner of Police, and only any surplus funds will be kept by the Crown.

Ms K. HODSON-THOMAS: I withdraw my amendment on the Notice Paper. I commend the minister for taking up this issue. We appreciate that the minister has been so accommodating in providing this amendment. When the amendment is moved, Mr Acting Speaker (Mr A.D. McRae), will that preclude other discussion on clause 12?

Mr J.C. KOBELKE: Under the standing orders, because the Bill has been amended, we would not be able to proceed to the third reading, but I was hoping to approach the member for Carine upon conclusion of the consideration in detail stage to see if we had her support to suspend standing orders to do that before leaving today. I do have agreement with another person on the other side and the leader of opposition business, but we would need to suspend standing orders to conclude some other matters. I will talk to the member for Carine in a moment and, if she is happy with that, we will seek to suspend standing orders. That matter will be done by agreement. If it is not done by agreement, we will not proceed in that way.

The ACTING SPEAKER (Mr A.D. McRae): Two questions have been asked. Firstly, the member for Carine asked whether she could discuss other parts of clause 12, which is the question before us. I will put the amendment as moved by the Minister for Police and Emergency Services; the member for Carine can then talk about any other part of clause 12. Secondly, the member will still need to have that conversation with the Leader of the House about how to proceed once the matter has been dealt with.

Amendment put and passed.

Ms K. HODSON-THOMAS: I have a number of questions about clause 12. I will try to streamline them, because I know it is Easter Thursday and people would like to get away as soon as possible, but this is important legislation and people need to understand it. From my perspective, I understand the "impounding offence (driving)", particularly as it relates to sections 59, 59A, 60 or 61, which are very serious offences under the Road Traffic Act, but I seek some clarification on a number of other matters. I alluded to these during the second reading debate, particularly the release of impounded vehicles, which is referred to on page 12 in proposed section 79D - release of impounded vehicles, which states -

"Impounded vehicle" means a vehicle impounded under section 79 or 79A.

In this instance we are talking about the 48-hour impounding of a vehicle. Proposed subsection (2)(c) states -

a senior officer is satisfied that unless the vehicle is released, exceptional hardship will be suffered in the particular case.

A vehicle that belonged to the parents of a young person could be impounded, and that could result in exceptional hardship for the parents. What does the minister deem to be "exceptional hardship"?

Mrs M.H. ROBERTS: Police officers have an awful lot of discretion in many areas, and this is an area in which they would have some discretion. If the parents had other children and one of the children had a medical condition that required transport for treatment or the like, that would be an example of "exceptional hardship".

Ms K. Hodson-Thomas: What if the parents might not be able to go to work without the vehicle?

Mrs M.H. ROBERTS: If parents could demonstrate that some hardship would result from that, such as a threat to their employment, it would be an example of a hardship circumstance that would be favourably considered.

Ms K. HODSON-THOMAS: I refer to proposed section 80D, "Effect of confiscation". The minister's legal adviser has clarified this proposed section to me. However, for the record, does the "property in a vehicle" mean the vehicle per se and not the driver's property within the vehicle? I know the answer, but I would like further clarification on the record. We are not talking about someone's university books or something in the vehicle; we are talking about the vehicle itself.

Mrs M.H. ROBERTS: This refers to the ownership of the property of the vehicle. I move -

Page 20, after line 32 - To insert the following -

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- (i) in the case of a confiscated vehicle, in satisfaction of any unpaid amount known to the Commissioner -
 - (i) for which the vehicle was nominated in writing as security for the payment of that amount; and
 - (ii) that, but for the confiscation of the vehicle, would have been payable to a person other than the person convicted of the offence in respect of which the vehicle was confiscated;

Amendment put and passed.

Ms K. HODSON-THOMAS: Members who have not read the legislation, as I have, may not appreciate that the commissioner must provide in writing notice of his intention to proceed to sell a vehicle and items within that vehicle. The commission should give at least 14 days written notice. It is important to place that on record. The Opposition supports this legislation and looks forward to it being implemented.

Clause, as amended, put and passed.

Clauses 13 to 15 put and passed.

Title put and passed.