ROAD TRAFFIC AMENDMENT (IMPOUNDING AND CONFISCATION OF VEHICLES) BILL 2016

Consideration in Detail

Clause 1 put and passed.

Clause 2: Commencement —

Mrs L.M. HARVEY: I move —

Page 2, after line 10 — To insert —

(2) Subsection (1)(b) is subject to section 54.

Mrs M.H. ROBERTS: I wonder whether the minister might put on record what has necessitated this amendment to her legislation.

Mrs L.M. HARVEY: The reason for all these amendments is that this amending legislation was on the notice paper in Parliament at the same time as other amendments to the Road Traffic Act. These are all consequential amendments to ensure that this amending legislation will marry appropriately with the other amending legislation to the same act, which has been passed subsequently in the council.

Mrs M.H. ROBERTS: Can the minister advise why the Road Traffic Legislation Amendment Bill 2016 and the Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill 2016 were not brought to the Parliament as one bill and potentially dealt with a lot more promptly and expeditiously? What necessitated them being two separate bills?

Mrs L.M. HARVEY: They were drafted at different times. Rather than holding up the process with both amendments, as the Road Traffic Legislation Amendment Bill was ready to be introduced, we introduced it knowing that when this Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill came to Parliament, we would need to put consequential amendments on the notice paper, depending on which amending legislation was approved by Parliament first.

Mr R.F. JOHNSON: I notice there are basically four pages of amendments on the notice paper. I thought the minister might have said that there are some serious flaws in the original legislation which is why she has had to put four pages of amendments on the notice paper. Simple legislation that was recently introduced in Parliament had only eight clauses but the minister said that was seriously flawed, as was the legislation we tried to introduce again today. I think there are some inconsistencies. I would like to know why this bill is not seriously flawed but other legislation is. The same draftspeople draft the legislation.

Mrs L.M. HARVEY: I think I made it very clear that there were two amending bills in Parliament at the same time at different stages. These consequential amendments are a result of that. There is no flaw in either amendment bill. There is a requirement to update this amendment bill to ensure that it is consistent with the previously passed amendment legislation so that the legislation flows in the appropriate numbering system and that it makes sense. There is no flaw in either bill; it is just one of those anomalies that occur with the passage of time. With respect to the other legislation, I believe we debated that at the time.

Mr R.F. JOHNSON: No, we did not debate it at the time because the minister gave no reason. The minister simply said there were serious flaws in that legislation. She has never ever had the common courtesy to tell us what the flaws were; like the sexual abuse ones.

Mr J. Norberger interjected.

Mr R.F. JOHNSON: Why don't you be quiet! You're supposed to be a Christian but you voted for paedophiles today. You're supposed to be a Christian from Globalheart—you're a disgrace!

The ACTING SPEAKER (Ms L.L. Baker): Member for Hillarys and parliamentary secretary, that is not appropriate.

Mr R.F. JOHNSON: The point I wanted to make was simply this: this is quite a large bill and we have to cover four pages of amendments. Why did the minister not show common courtesy to this Parliament by taking these bills away and coming back with one bill that did not need amending, like the one we have in front of us today? Why did she not do that? The minister has different bills. We could have debated one bill rather than going backwards and forwards asking questions about all these amendments. I would say that that was flawed.

Mrs L.M. HARVEY: I realise that the member has not been here for the past two days, but I tabled the explanatory memorandum to explain why these amendments were here. I cannot make it any clearer. I have nothing further to add.

Mrs M.H. ROBERTS: The member for Hillarys made a very good point. The minister fails to point out to the house that she said there happened to be these two bills before the house at the same time. It was as though it was some kind of mystery or coincidence—that it just happened. This minister is the sponsor of both bills. Both bills are hers. If there is some little issue with coordination, she is in the perfect position to have done this and she would not have had to move this amendment. The Leader of the House is often critical of how long it takes to get some legislation through this house. This legislation exemplifies why it often takes so long—it is because of the muddle that the government is in. The Minister for Police made it quite clear in her second reading speech that this bill fulfilled an election commitment from 2013—that the provisions here reflected what was promised at the 2013 state election. That is why these tougher powers to impound and the other powers in connection to off-road bikes were part of this legislation. I pointed out during the second reading debate that it is rather poor to make a promise at an election to say that certain things will be done if the government is re-elected for the next four years but then wait until the death knell in Parliament to introduce the legislation. Any competent minister would have introduced the legislation a couple of years ago for starters and would have looked at all the various amendments she wanted to make to the Road Traffic Act. She could have had them in one substantial bill. It would all have been very clear. She would not have needed to move amendments.

I make the point, too, that this bill will not be able to pass through this house today because the government has amendments on the notice paper like the one currently under discussion. If that were not the case, we probably would not be pausing at clause 2 to have this debate. The government likes to complain pretty hard but it brings it all on itself. No-one brings it more on herself than the Minister for Police. Her handling of legislation is poor. There is one bill before one house and another bill before another even though the same act is being amended. The government realises there is an overlap and that things have not timed out as she thought they might. The government is in charge of the timing of legislation before each house and whether one bill overlaps with another. The ball is in its court. The government could have much better coordinated this. It would save a lot of parliamentary time if it simply got its act together. When two bills are brought to the house—as the Minister for Police has done—of course that gives her two sets of second reading speeches, two lots of consideration in detail stage and two lots of third reading stage. If the minister had been smart she would have brought one bill before the house, she would have had one second reading speech, one consideration in detail stage and one third reading stage. To find that duplicated in both houses exemplifies pretty poor management.

I pause on this amendment that the minister has moved to make a point, because there is a jumble here. Many members have read the commencement clause and it is really hard to follow. The minister has moved that the new subsection (2) is to be inserted to provide that —

> If the *Road Traffic Legislation Amendment Act 2016* section 42 comes into operation … before … section 3A of this Act … section 4 and Part 3 Division 2A of this Act —
>
> …
>
> (b) are repealed when section 3A … comes into operation.

I expect for most people that is about as clear as mud! It should not have been that way. We often ask to have compilation bills or a marked-up copy of bills. In this instance it would have been good to have a marked-up copy of both bills. All of this could have been avoided had we simply had one amending bill before the house and not two; or indeed if the minister and the government had got their act together at a much earlier time and introduced this impounding legislation two or three years ago rather than in the third-last sitting week of the year.

The ACTING SPEAKER: I will give the call to the member for Hillarys. I need to tell members that even though I have let this line of questioning continue, it is not strictly relevant to the specifics of that amendment; it is a more general debate. Could you please look specifically at the amendment.

Mr R.F. JOHNSON: Madam Acting Speaker, I always take great notice of your direction. I promise you I will do that.

Can the minister please explain in clear detail what this amendment is destined to achieve?

Mrs L.M. HARVEY: I will go to the explanatory memorandum, which details it very clearly. The new subsection (2) is inserted to provide that —

> If the *Road Traffic Legislation Amendment Act 2016* section 42 comes into operation … before … section 3A of this Act … section 4 and Part 3 Division 2A of this Act —
>
> …
>
> (b) are repealed when section 3A … comes into operation.

It is a consequential amendment as a result of the two amending bills going through Parliament simultaneously.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 3: Act amended —

The ACTING SPEAKER: The question is that clause 3 stand as printed.

Mrs M.H. ROBERTS: Madam Acting Speaker —

The ACTING SPEAKER: We have to focus on new clause 3A. My advice is we move —

Mrs M.H. ROBERTS: Am I able to speak to clause 3?

The ACTING SPEAKER: If you would like to, yes, certainly. Clause 3A will follow.

Mrs M.H. ROBERTS: Clause 3 simply states —

> This Part amends the *Road Traffic Act 1974*.

I realise that other acts are amended in other parts of the bill. I note the flagged amendment on pages 10 and 11 of today's notice paper. I note that the minister intends to move that amendment. I signify that we would like a full explanation put on the record about why that is necessary. It seems to me quite clear that it would stand alone. Clause 3 states simply —

> This Part amends the *Road Traffic Act 1974*.

I do not see why that would need to be changed.

Mrs L.M. HARVEY: There is not a change to clause 3. Proposed new clause 3A is an alternative to clause 4, and we will come to that after clause 3 has been passed.

Clause put and passed.

New clause 3A —

Mrs L.M. HARVEY: I move the following amendment on the notice paper at page 10 —

> Page 3, after line 3 — To insert:
>
> **3A. Section 49AAA amended**
>
> (1) In section 49AAA insert in alphabetical order:
>
> ***above the speed limit***, in relation to the driving of a vehicle, means driving the vehicle at a speed that exceeds the speed limit applicable to the driver, the vehicle or the length of road where it is being driven;
>
> ***confiscation zone*** means —
>
> in relation to a vehicle, a length of road where the speed limit applicable to the vehicle, or the length of road, is 50 km/h or less; or
>
> a school zone;
>
> ***motor cycle*** means a motor vehicle that has 2 wheels and includes —
>
> a 2-wheeled motor vehicle with a sidecar attached to it that is supported by a third wheel; and
>
> a motor vehicle with 3 wheels that is ridden in the same way as a motor vehicle with 2 wheels;
>
> ***school zone*** means a length of road designated as a school zone under a road law;
>
> ***speed limit*** means a speed limit set under a road law.
>
> (2) In section 49AAA in the definition of ***provide driving instruction*** delete "vehicle." and insert:
>
> vehicle;
>
> Note for this section:
>
> This section is an alternative to section 4 and Part 3 Division 2A and applies if the *Road Traffic Legislation Amendment Act 2016* section 42 comes into operation on or before the day on which this section comes into operation. See section 54(1).

This amendment is quite extensive. The reason for this amendment is that new clause 3A is an alternative to clause 4 and part III division 2A and applies—as with the other amendments on the notice paper—to the Road Traffic Legislation Amendment Act 2016. Section 42 comes into operation on or before the day on which this

provision comes into operation. It is basically to ensure that this legislation is amending the amended Road Traffic Act as a consequence of the Road Traffic Legislation Amendment Bill that has already been passed.

Mrs M.H. ROBERTS: The minister said that it is an alternative to clause 4. I note that the minister is not intending to delete clause 4. Therefore, can the minister explain how that would work?

Mrs L.M. HARVEY: When new clause 3A comes into operation, the road traffic amendment act will repeal clause 4. Basically, at the time it is proclaimed, clause 4, as we are reading it on this amending bill, is repealed and new clause 3A replaces it.

Mrs M.H. ROBERTS: When the minister refers to the road traffic amendment act, is the minister actually referring to the Road Traffic Legislation Amendment Act?

Mrs L.M. HARVEY: Yes.

Dr A.D. BUTI: The minister's answer to the member for Midland was that the reason she used the word "alternative" is that clause 4 will remain in operation until new clause 3A comes into existence. Is that what the minister is saying?

Mrs L.M. Harvey: Yes.

Dr A.D. BUTI: When will clause 4 come into operation?

The ACTING SPEAKER: We are now on new clause 3A.

Dr A.D. BUTI: I know, but I am seeking an explanation for the operation of clause 4.

Mrs L.M. HARVEY: Clause 4 would come into operation if this was proclaimed prior to the Road Traffic Amendment Legislation Bill that has already passed through the house. This is to ensure that we have the appropriate sections laid out, dependent on which piece of legislation is gazetted first.

Mrs M.H. ROBERTS: The minister is presenting this as though there is some kind of mystery about which bill could be proclaimed first. Again, this is legislation that the minister is responsible for. The minister is the person who sends forward the paperwork to get the proclamation of either one of these bills. The minister can presumably proclaim these bills in any order she would like. I am a bit mystified as to why the minister is presenting this case as, "If this bill is proclaimed before that bill". Surely the minister is the person who determines what is proclaimed first. The minister is responsible for both these pieces of legislation. Therefore, why are we having this type of weird and doubtful discussion? Both these pieces of legislation are under the minister's control. Surely the minister is able to determine which bill is proclaimed first and on what day.

Mrs L.M. HARVEY: I will make it clearer. The Road Traffic Legislation Amendment Bill that has been passed will come into effect prior to this legislation. Therefore, this amending legislation needs to have the insertion of new clause 3A so that it accurately reflects the amendments that have been made in the other piece of legislation that has gone through the Parliament.

Mr R.F. JOHNSON: I am a bit confused. Did I hear the minister say that the amendment is on page 10 of the notice paper?

Mrs L.M. Harvey: Yes.

Mr R.F. JOHNSON: Can the minister tell me where the amendment is on the notice paper, because it is not on page 10?

The ACTING SPEAKER: It is on page 12, minister.

Mr R.F. JOHNSON: The minister is not misleading the Parliament I hope.

Mrs L.M. HARVEY: I have an old notice paper. It is page 12.

Mr R.F. JOHNSON: It is flawed, is it? I have been looking at page 10 to try to find the amendment, and I cannot find it anywhere. It is nowhere to be found.

Mrs L.M. Harvey: You could not flick the page over?

Mr R.F. JOHNSON: No. I was looking for it. The minister said page 10. I took her at her word—big mistake; I realise that.

Mrs L.M. HARVEY: I think I need to clarify this for members' information. I do apologise. I was reading from yesterday's notice paper. Obviously there have been some changes to the notice paper today. For the clarity of all members, the amendment is not on page 10. If members flick the page over, it is on page 12.

Dr A.D. BUTI: I could deal with this when we get to the next clause, but I will deal with it now. The definition of "motor cycle" in new clause 3A reads —

> ***motor cycle*** means a motor vehicle that has 2 wheels and includes —
>
> a 2-wheeled motor vehicle with a sidecar attached to it that is supported by a third wheel; and
>
> a motor vehicle with 3 wheels that is ridden in the same way as a motor vehicle with 2 wheels;

That makes commonsense. However, I am wondering whether the minister is restricting this too much. With modern technology, a vehicle might have four wheels and be driven in the same way as a motor cycle is driven. However, that will not come under this description. Some golf carts have four wheels. They could be driven in a dangerous situation and cause a nuisance in the same way as a motor cycle might cause a nuisance. I am wondering whether the minister is being too restrictive in her definition.

Mrs L.M. HARVEY: Member, I am confident that this definition is consistent with the definition of "motor cycle" in the Road Traffic Act. That is why this definition has been used for the purposes of the legislation. I take the member's point that there could be changes in the future. However, at present this definition adequately and appropriately describes the type of vehicle that will be subject to the confiscation orders that the police will be able to implement should this legislation pass.

Mrs M.H. ROBERTS: Just to be clear, the new clause 3A that the minister is seeking to insert contains definitions for "above the speed limit", "confiscation zone", "motor cycle", "school zone" and "speed limit". Currently, those definitions are listed at clause 4 of the original bill that was presented to the house. The minister has advised that when the Road Traffic Legislation Amendment Act 2016 is proclaimed, clause 4 will be deleted and replaced with new clause 3A. I am wondering whether that will then be renumbered in the bill and how that will work. I am also wondering when the government intends to proclaim this legislation. The impression that I am getting from this discussion is that the Road Traffic Legislation Amendment Act 2016 is likely to be proclaimed relatively shortly, but there is no real intention to proclaim the Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill 2016 any time particularly soon. Obviously, I am hopeful that this legislation, which the opposition supports, can go through this house, if not today, on the next day on which we sit. It cannot go through today because of the government's amendments, so we will have to have the third reading the next time we sit in any event, irrespective of what point we get to today.

I note that the upper house is sitting for another three weeks. I understand that my colleague in the upper house Hon Sue Ellery has asked the Liberal leader in the upper house, Hon Peter Collier, for a list of priority legislation. I would like to know from the Minister for Police; Road Safety whether this will be a priority bill to get through the upper house by the end of the year; and, if so, when is the earliest opportunity that this legislation could be proclaimed?

Mrs L.M. HARVEY: The answer is: yes, this bill is being given priority for passage through the Legislative Council. Obviously, it is a priority of government and we would like it to pass. Once it passes through both houses of Parliament—presuming it passes through the Legislative Council in the three-week sitting period that it has left—we envisage that this legislation will be proclaimed in mid to late December. I cannot see any reason not to progress with that once the legislation is through both houses.

Mrs M.H. ROBERTS: Turning to the definitions, under proposed section 49AAA, the definition for "confiscation zone" states —

> in relation to a vehicle, a length of road where the speed limit applicable to the vehicle, or the length of road, is 50 km/h or less;
>
> or a school zone;

I understand that this is a new definition that is not in any of the current road traffic legislation. As we said, we support the establishment of confiscation zones. As I read the proposed definition, it will apply to school zones. I note that school zones operate for set hours in the morning and afternoon. I wonder whether there should be some clarification that it means when the school zone is operative. School zones are designated lengths or areas of roads in the vicinity of schools, but they are operative for only certain hours, so my concern is that we might call this a confiscation zone, but it should be a confiscation zone only on days that school is on and during those set hours. For example, school zones are not operative in January, so I hope that people would not be unintentionally potentially caught out by this legislation because it is a confiscation zone. I cannot see any reference here or elsewhere to the actual hours in which those zones operate.

Mrs L.M. HARVEY: This defines "confiscation zone". As we get further into the legislation around the confiscation provisions, it specifies that a school zone needs to be active. I would note that not every school zone in the state is a 40-kilometre-an-hour zone. There are school zones that are 60-kilometre-an-hour zones. We have referred to it here as a "school zone. As we get further into the legislation, we will define that the school zone

needs to be active for the confiscation to occur, dependent, of course, on whether the behaviour is under the definition of "confiscation zone" proposed paragraph (a), whereby it may be a 50-kilometre-an-hour zone in which the confiscation could apply regardless of whether the school zone was active.

Mrs M.H. ROBERTS: Thanks for that advice. The minister has not completely alleviated my concerns and I note that some school zones—indeed, I have some in my electorate—are 60 kilometres an hour. For example, the section of Great Eastern Highway in the vicinity of Governor Stirling Senior High School is a 60-kilometre-an-hour school zone. I gather the minister's clarification means that Great Eastern Highway in Woodbridge in the vicinity of Governor Stirling Senior High School will be included. The minister has also just advised that somewhere further in the legislation, there was a reference to school zones needing to be active. Could the minister point out that section to me so I can look through that while we have other debates?

Mrs L.M. HARVEY: Member, the advice I was given was not quite accurate. "School zone" is defined in the Road Traffic Code, which provides that a school zones needs to be signposted and active during the zone periods. It has not been cross-referenced here because the Road Traffic Code and the act are conjunctively considered.

Mrs M.H. ROBERTS: New clause 3A amends section 49AAA to read, in part —

> ***confiscation zone*** means —
>
> in relation to a vehicle, a length of road where the speed limit applicable to the vehicle, or the length of road, is 50 km/h or less; or
>
> a school zone;

My view is that it should state "or an active school zone" so that people do not have to consult another piece of legislation to work out what that means. Perhaps the minister may like to consider inserting the word "active" so that it states "or an active school zone" so that there is no unintended consequence.

Mrs L.M. HARVEY: A school zone is a school zone only when it is active. When the school zone is not active, it reverts to the previously signposted speed limit. For example, some school zones become a 40-kilometre-an-hour zone in an area that is ordinarily signposted for 70 kilometres an hour. If the school zone is not active, it is no longer a school zone and it is speed limited to 70 kilometres an hour. The definition stands on its own. School zones by definition are school zones only when they are active.

Dr A.D. BUTI: Is the definition that the minister gave—that a school zone is a school zone only when it is active—in the Road Traffic Code? Is that what the code states?

Mrs L.M. Harvey: Yes.

Dr A.D. BUTI: I notice that in section 49AA, "grievous bodily harm" has the meaning given in the Criminal Code. If "school zone" has the meaning given in the Road Traffic Code, the legislation should mention that. The minister says that it is not mentioned because the legislation is read in conjunction. It is still a separate piece of legislation. The bill before us should state that the school zone has the definition or meaning that is given in the Road Traffic Code. That is what we should have instead of just "school zone". Without providing a definition, that is not clear. Therefore, the proposed section should state that "school zone" has the meaning given in the Road Traffic Code.

Mrs M.H. ROBERTS: Further to the point made by the member for Armadale, this is misleading because when one looks further, one sees that this amendment to the legislation defines "school zone". Rather than adopting the excellent suggestion of the member for Armadale that the legislation refer to the Road Traffic Code, as the minister referred us to when we asked the question, the proposed section goes to the bother of defining "school zone". I quote from the minister's own amendment —

> ***school zone*** means a length of road designated as a school zone under a road law;

A lot of lengths of road are designated as school zones. There is no reference in the bill of it being active. There is no reference to the Road Traffic Code. This is very misleading. I am wondering what on earth is added by defining "school zone" in the bill. It states —

> ***school zone*** means a length of road designated as a school zone under a road law;

Why would it say that? Presumably, it should have the same definition as the Road Traffic Code. That should be the reference. Presumably, in the absence of this definition, the minister has put to us that it would be the normal definition under the Road Traffic Code. If anything, the minister's amendment of a line and a half confuses rather than clarifies.

Mrs L.M. HARVEY: Just to clarify, the Road Traffic Code is the subsidiary legislation to the Road Traffic Act—the regulations, if you like. The reference in the act is to the school zone, meaning a length of road designated as a school zone under a road law. The subsidiary legislation that further defines "road law" that sits underneath the Road Traffic Act is the Road Traffic Code, which goes into further detail on what constitutes a school zone. The two have always been read in conjunction. The subsidiary legislation always goes on to further define the broad definitions in the Road Traffic Act. I understand that there are definitions of "grievous bodily harm" in the Criminal Code. Sometimes we need to cross-reference other legislation because the Criminal Code is not subsidiary legislation to the Road Traffic Act whereas the Road Traffic Code is.

Mrs M.H. ROBERTS: We have gone around in a lot of circles thanks to the advice the minister has been giving us this afternoon. Earlier I raised an issue about the definition of "confiscation zone" which states that a confiscation zone means a school zone. I then questioned whether it needed to be an active school zone and how people would be alerted to that. The minister advised me that that was further back in the legislation. Then we discovered that it is not defined in this bill or in the legislation that is currently before us. She then advised that it was in the Road Traffic Code. Now she is saying that the Road Traffic Code is subsidiary legislation or regulations. She should work out which of those two things it is and let us know. If it is subsidiary legislation that further defines things and, as I think she acknowledged, the Road Traffic Act is the main act—she then attempted to suggest that the code was somehow subsidiary legislation that further defines—presumably the definition would have precedence and that is what goes into the Road Traffic Act. Proposed new clause 3A inserts a definition of "school zone" into the Road Traffic Act. That definition states —

> means a length of road designated as a school zone under a road law;

I have been puzzled all along why we have those references to "a road law" rather than something more specific. My simple reading of this is that it is a length of road. It is a length of road that is designated as a school zone under a road law. I think this is about as clear as mud. I do not think inserting the definition of "school zone" at this point clarifies anything. I suggested earlier that it confuses it. The minister should tell us once and for all whether she considers the Road Traffic Code to be either subsidiary legislation or regulations since she has said that it is both. Which is it? She also claimed that it somehow further defines what is in the bill. This is the principal legislation. This definition will be inserted into the Road Traffic Act. I think this wording is highly misleading and confusing. The member for Armadale made the excellent point that in other circumstances, the government has referred to the Criminal Code or whatever. In this case, I think it would be logical to refer to the Road Traffic Code, so why does the definition not say that?

Mrs L.M. HARVEY: My advisers, who have been involved in the drafting of this bill and many other legislative instruments, tell me that this reference to a road law is consistent throughout the act and that the Road Traffic Code is subsidiary legislation to the Road Traffic Act and is defined as "under a road law". This definition is consistent with the way police are used to interpreting legislation and using the Road Traffic Code. I cannot explain it further other than to say that my advisers tell me that this is appropriate and consistent with the rest of the Road Traffic Act and the Road Traffic Code and with the understanding that police officers have operationally in enforcing it.

Dr A.D. BUTI: I do not think we need to worry about whether the police understand it. Obviously, they would understand. It is a case of whether the general public understands it. As the minister would know, ignorance of the law is no defence. We therefore have to make sure that the law is clear for the general public. It is just not clear. The member for Midland mentioned that there is a definition in the bill, but the minister said that that is really not the definition; the definition is in the Road Traffic Code. It is like we have half a definition and then the road law is bumped on the end. That drafting is very sloppy. Surely it should state "school zone has a meaning given in the Road Traffic Code". It should be as simple as that. Why the minister does not agree that that is the most logical and clearest way to proceed is unclear to us. It is incredibly sloppy. I am sure the words "under a road law" are used consistently because the minister just mentioned that, but I would like the minister to point out where else in the act it states "under a road law". If it does, I think it is incredibly sloppy drafting.

Mrs L.M. HARVEY: As I said, there are a number of pieces of road traffic legislation. To define "road law" and to ensure that everyone understands that, we need to go back to the Road Traffic (Administration) Act 2008, which states —

> ***road law*** means any of the following enactments —
>
> (a) this Act;
>
> (b) the *Road Traffic Act 1974*;
>
> (c) the *Road Traffic (Authorisation to Drive) Act 2008*;
>
> (d) the *Road Traffic (Vehicles) Act 2012*;

That is the definition of "road law", which, as I said, is consistent through the road traffic legislation.

Mrs M.H. Roberts: It doesn't mention the code there, though.

Dr A.D. BUTI: The minister's answer does not make that point. She is saying that the public need to go to the Road Traffic (Administration) Act to find a list of four or five other pieces of legislation. They have to work their way through that until they get to the definition of "school zone", which is in the Road Traffic Code. As the member for Midland said, that is not even referred to. If they went to the act that the minister referred to, they would not find the Road Traffic Code, so how would they find the definition of "school zone"? Surely the legislation should just state "school zone has the meaning given in the Road Traffic Code". The minister's example means that people have to go through five pieces of legislation and even those five pieces of legislation will not have the definition of a school zone.

Mrs M.H. ROBERTS: Let us make it very clear that when I asked the minister where "school zone" was defined, she said that it was defined in the Road Traffic Code, yet her definition states that it means a length of road designated as a school zone under a road law. We are now advised by the minister that road laws are defined in the Road Traffic (Administration) Act, which lists four or five acts that pertain to road traffic laws. The only issue is that none of those are in the Road Traffic Code, which is where the minister told us to look for the definition. Does the minister really mean that it is defined under "road law", as it appears under the definitions, or does she mean it is defined in the Road Traffic Code, which is what she said in her initial answer?

Mr R.F. JOHNSON: I will carry on from where my two colleagues have left off. This is one of the most convoluted pieces of legislation I have seen for a long time. I mean no disrespect to the advisers at the table, whom I know from past experience. They are very competent and they understand this legislation absolutely backwards. But how on earth does the minister expect a member of the public to interpret what she has put before the house today when it is all over the place? The public will have to refer to so many pieces of legislation. The word "code" does not appear anywhere until we look at older legislation. How does the minister expect members of the public to understand what she is trying to achieve? In the past the legislation that both the member for Midland and I introduced when we were ministers was simple. If a person committed a hooning offence, they knew exactly what it was. It was clear and concise, and the penalties were clear and concise. There are so many amendments on the notice paper. I do not know who drafted the legislation, but the trouble is that it is two pieces of legislation, as the minister already said, that she is trying to juggle into one.

Mrs L.M. Harvey: No, we're not.

Mr R.F. JOHNSON: The legislation refers to two pieces of legislation; one that was passed previously and this one. I think the minister will do a terrible disservice to the general public if she asks it to understand what is before the house at the moment. I will be honest; I am having a job following it completely. If I want to follow it, I have to look at other acts and historic terms. To be honest, I cannot remember them all. How does the minister honestly expect a member of the public to interpret this legislation? The police will be able to do it; they will be concise. But members of the public will not have a clue until they are pinged and lose their vehicle. Is that fair? Is that honest? Is that the way to treat members of the public? If somebody is hooning or driving excessively and could possibly cause an accident, I am all in favour of taking away their cars. I am in favour of crushing them and all those sorts of things. But the legislation we are looking at today is really all over the place. It has some serious flaws that need looking at more carefully. I suggest that the minister take the bill away and come back with a consolidated bill that is easy to read and understand and with the references that need to be inserted, instead of having four pages of amendments on the notice paper. Even the minister is confused about what page we are on, and we are expected to follow the amendments. I have a marked-up copy of the Road Traffic Act 1974. I also have a copy of the explanatory memorandum, the notice paper with all the amendments and the bill before the house. It is okay for the minister, who has three very highly trained and professional advisers sitting at the table, but we on this side of the house do not have that luxury. We have to follow this as clearly as we can. It is not easy to follow it, because it is all over the place. If we cannot follow it clearly, how can we expect members of the public to follow it? The average copper who goes out on the beat will have a hell of a job understanding all the implications of this legislation and the amendments before the house today.

I suggest that the minister take this legislation away and bring a consolidated bill before the house, a bill that is simple so that everybody can understand it—particularly the public, because it is the public who will be affected by what could be seen as draconian legislation. It is not that I do not support the bill; indeed, I support any measure that reduces death and serious injury on our roads. I support any legislation that adds to the penalty that already exist for hoon drivers, reckless drivers, drink-drivers and so on and so forth. The minister should redraft this bill in simple terms and bring it back to the house when we come back the week after the two-week recess. In that way, we will have a consolidated bill that everybody can understand but, most importantly, that the public can understand. If we asked a journalist what is going on, they would not have a clue.

Mrs L.M. HARVEY: I am sorry the member is confused, but the definition of "school zone" is consistent. I put it to the member that I could collar any licensed driver on the street and ask them what a school zone is and they would be able to tell me. A school zone is a zone outside a school with a sign that helps to reduce the speed limit of the particular section of road during the operation times of a school zone, which are 7.30 to 9.00 in the morning and 2.30 to 4.00 in the afternoon. We have put flashing signs in school zones to help motorists become more aware when those zones are operational. I put it to the member that every member of the community knows what a school zone is. These things are further defined for the purposes of the administration of these acts when we get into legislation, the Road Traffic Code and regulations et cetera. A school zone is a school zone. I think it is very clear. If the member thinks it is unclear and wants to move an amendment, I suggest that he do so, but I have nothing further to add. I think it is clear. I could ask my 16-year-old, who is currently going through driver training, what a school zone is and she would be able to tell me. I do not intend to offer an amendment on behalf of the government to the definition. I think it is clear enough.

Mrs M.H. ROBERTS: A short while ago, the minister suggested that the Road Traffic Code was like regulations for the Road Traffic Act. Can she clarify whether that is really the case? She also said that the Road Traffic Code is subsidiary legislation. Can she clarify whether the Road Traffic Code is subsidiary legislation?

Mrs L.M. HARVEY: I am not sure why it is necessary or essential to define this, but my advisers tell me that the Road Traffic Code is subsidiary legislation to the Road Traffic Act —

Mrs M.H. Roberts: Not regulations.

Mrs L.M. HARVEY: It operates like a regulation in that further regulations that would need to be relevant to the Road Traffic Act would be further defined in the code. That is the advice I have been given.

Mrs M.H. ROBERTS: I refer to one of the minister's amendments on today's notice paper—today being Thursday, 20 October—at the top of page 13, which reads —

> (2) In section 49AAA in the definition of ***provide driving instruction*** delete "vehicle." and insert:
>
> vehicle;

Can the minister explain why the word "vehicle" is being deleted to insert the word "vehicle"?

Mrs L.M. HARVEY: I understand that this will further highlight the word "vehicle" by changing the comma to a semicolon.

Mrs M.H. ROBERTS: Directly underneath that, it reads —

> Note for this section:
>
> This section is an alternative to section 4 and Part 3 Division 2A and applies if the *Road Traffic Legislation Amendment Act 2016* section 42 comes into operation on or before the day on which this section comes into operation. See section 54(1).

The minister advised the house this afternoon that the Road Traffic Legislation Amendment Act (No. 2) 2016 will come into operation before this bill. She said that that will happen. Why has the word "if" been used? Why not amend it rather than having "if this", "then that"?

Mrs L.M. HARVEY: Although it is our intention to have the Road Traffic Legislation Amendment Act (No. 2) come into operation prior to this legislation, the prudent way to draft is to allow for the alternative in the event that something unforeseen occurs in a different sequence. That is the advice I have been given.

New clause put and passed.

Clause 4: Section 49AA amended —

Mrs L.M. HARVEY: I move —

> Page 4, after line 7 — To insert:
>
> Note for this section:
>
> This section read with Part 3 Division 2A is an alternative to section 3A and applies if the *Road Traffic Legislation Amendment Act 2016* section 42 has not come into operation before this section and Part 3 Division 2A has come into operation. See section 54(2).

Mrs M.H. ROBERTS: I have a point of clarification. Is the minister moving the other three lines underneath that amendment that states "Part 3 Heading" and so forth?

The ACTING SPEAKER (Ms L.L. Baker): Would the minister like to seek leave to move those amendments?

Mrs L.M. HARVEY: I would like to seek leave to move the other amendments subject to clause 4 as well.

Mrs M.H. ROBERTS: Can I just have a point of clarification please, Madam Acting Speaker? The notice paper refers to clause 4 and then there are more amendments under clause 4. Are these all separate amendments or is there only one amendment to clause 4, or two amendments or three amendments—what is it? The minister has

just read out the first little bit under the heading of clause 4 on the notice paper. Is that all that she has moved; and, if so, is that all that we are debating? The rest of what is written there —

The ACTING SPEAKER: I can clarify that for you, member. I am informed it is —

Mrs L.M. HARVEY: I thought I was correct in the first instance. Sorry, I am a bit tired and I am not well. The member had me somewhat confused. However, there is an amendment to clause 4 and the other amendments are to part 3, so we will deal with them later.

The ACTING SPEAKER: Correct. We are dealing with the amendment to clause 4 that the minister has moved, and not the other amendments, member for Midland.

Mrs M.H. ROBERTS: Again, just to get this clarified, I understand that the minister has moved the amendment that she read out to clause 4 and that that is all we are debating at the moment. Clause 4 has a number of lines to it. The minister has moved this necessary amendment because the Road Traffic Legislation Amendment Bill (No. 2) 2015 will potentially become law before this Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill 2016. After this amendment is agreed to, can you, Madam Acting Speaker, clarify for me that we will then get to examine the other components of clause 4?

Mrs L.M. HARVEY: Just to clarify things for the member, if the Road Traffic Legislation Amendment Bill (No.2) comes into effect prior to the Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill, then clause 4 will come into effect and proposed new section 3A will be repealed. Should the Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill come into effect prior to the Road Traffic Legislation Amendment Bill (No.2), then proposed new section 3A will come into effect and clause 4 will be repealed. It is an either/or scenario to ensure that the final legislation will make sense and follow an appropriate sequence.

Mrs M.H. ROBERTS: Is there any material difference between proposed new section 3A and clause 4?

Mrs L.M. HARVEY: No, not as I see it. It is really just about a numbering sequence.

Amendment put and passed.

Mrs M.H. ROBERTS: I note that the definition of "above the speed limit" refers to the speed limit applicable to the driver. Can the minister explain under what circumstances limitations apply to the driver rather than the road?

Mrs L.M. HARVEY: I am advised that there are certain categories of drivers who are speed limited generally to speed limits other than those that are posted. For example, truck drivers are speed limited to 100 kilometres an hour, and learners and probationary drivers have similar restrictions. Notwithstanding that they might be in a 110-kilometre-an-hour zone, they may be permitted under the rules to drive to a maximum of only 100 kilometres an hour.

Mrs M.H. ROBERTS: The minister's answer is a little confused because I asked about the speed limits applicable to the driver. I am interested in special speed limits that might be applicable to vehicles. I do not think the speed limit is applicable to the truck driver, but, rather, the vehicle, and, in this case, the minister has referred to a truck. Just to be clear, the definition in clause 4(1) states —

> means driving the vehicle at a speed that exceeds the speed limit applicable to the driver, …

I do not know but that may be a learner driver. I have asked for those categories in which drivers may have limitations put on them. After that provision the definition states "the vehicle". Clearly, speed limitations are placed on certain vehicles and the minister has alluded to the situation with a truck, and then there is the length of road that determines the speed limit, which is what most of us are more familiar with. Again, I ask the question with respect to the driver.

Mrs L.M. HARVEY: As we are moving forward with technology and we have driverless trucks, I accept that. If a person is the driver of a truck that is speed limited to 100 kilometres an hour, by definition the driver of that vehicle is restricted to 100 kilometres an hour while driving that vehicle, which is why I included truck drivers in that context. In the case of learner and probationary drivers, as I said, the individual is speed limited regardless of what vehicle they drive.

Mrs M.H. ROBERTS: Are there other circumstances in which there would be a limitation on a vehicle; and, if so, what are they?

Mrs L.M. HARVEY: I am advised that there are limitations on, for example, vehicles under tow and bus drivers carrying passengers. There are other restrictions and it is incumbent upon those drivers to be aware of whatever

speed limited restriction might be upon them dependent on a licence restriction, a licence category or by virtue of the vehicle that they have carriage of.

Clause, as amended, put and passed.

Clause 5: Section 49AB amended —

Mrs M.H. ROBERTS: Clause 5 deletes section 49AB(1)(b) and inserts —

> (b) the person was driving the vehicle concerned on a road at 45 km/h or more above the speed limit; …

I think that relates to pages 3 and 4 of the Road Traffic Act. Page 3 of the Road Traffic Act contains a heading of "***grievous bodily harm***" that has the meaning given in the *Criminal Code* section 1(1). The bill states —

> ***motor cycle*** means a motor vehicle that has 2 wheels and includes —

That is part of the minister's amendment. Is grievous bodily harm defined in any other section of the Criminal Code? If so, why is there reference to section 1(1); if not, would the legislation not more likely stand the test of time if the words just said "given the meaning as defined in the Criminal Code" rather than specifying a particular section of the Criminal Code?

Mrs L.M. HARVEY: My advisers are looking that up, member, but the advice they have given me is that the definition of "grievous bodily harm" is in that section in the Criminal Code. This is just the drafting convention for where it is defined. "Grievous bodily harm" is defined only there.

Mrs M.H. ROBERTS: If that numbering ever changes, there will be an issue with this bill, which by then will be an act. I stand by my point that it may have made more sense to say, "as defined in the Criminal Code" without stating section numbers.

I refer to clause 5, "Section 49AB amended". On page 4 of the marked-up copy at paragraph (b) it states —

> the person was driving the vehicle concerned on a road at 45 km/h or more above the speed limit; or

The part the minister is deleting states —

> the person was driving the vehicle concerned on a road at a speed that exceeded the speed limit applicable to the vehicle, or the length of road where the driving occurred, by 45 km/h or more;

The minister is deleting one and replacing it with another. They look very similar to me. What is the real import of this change?

Mrs L.M. HARVEY: This change needs to be read in conjunction with the changes to the definition in section 49AA by which "above the speed limit" is to be defined as follows —

> … in relation to the driving of a vehicle, means driving the vehicle at a speed that exceeds the speed limit applicable to the driver, the vehicle or the length of road where it is being driven;

That allows for more clarity of the circumstance of aggravation when a person was driving the vehicle concerned on a road at 45 kilometres per hour or more above the speed limit. We have defined "above the speed limit" separately under definitions and clarified this circumstance of aggravation in the context of that definition.

Clause put and passed.

Clause 6: Section 60 amended —

Mrs M.H. ROBERTS: This clause amends section 60 with respect to "reckless manner". Amended section 60(1) will state —

> For the purposes of this section, a motor vehicle is driven in a ***reckless manner*** if it is driven in a manner (which expression includes speed) that is inherently dangerous or that is, having regard to all the circumstances of the case, dangerous to the public or to any person.

How is that defined? Who determines whether an action is reckless? What might seem reckless to one person may not seem reckless to another.

Mrs L.M. HARVEY: The advice I have is that "reckless manner" has been defined by the court and is dependent on the circumstances of each case. When the manner in which the vehicle is being driven is documented, there is a test of recklessness; for example, if a vehicle is fishtailing or engaged in other such activity, it is deemed to be reckless. Obviously, a charge like this would be tested by the court for whether the officer's assessment that the vehicle was being driven in a reckless manner is consistent with the court precedent.

Mrs M.H. ROBERTS: If someone were driving a vehicle two or three blocks and sideswiped five or six cars, would that fit the definition of a reckless manner?

Mrs L.M. HARVEY: It would depend on the circumstances. Potentially, yes, but it would depend upon the circumstances and the ability to prosecute the argument for reckless driving that would fit the court test determined by precedent.

Mr R.F. JOHNSON: What if the person was also drunk? What would be the case if a lot of people said that they were driving in a reckless manner in sideswiping half a dozen cars on their way home from, let us say, a wedding reception, possibly at Kings Park, and carried out a demolition derby on the way home, smashing up some property, and did not report it to police and were as drunk as a skunk? Would the police class that as reckless driving? Should that person be prosecuted? It would not have been in a confiscation zone; it would be in "any other place". Surely "any other place" covers a confiscation zone. Surely it covers everything. Any other place means anywhere. Why are there two provisions—one is "a confiscation zone" and the other is "any other place"? Why not just say "anywhere"? If someone drives recklessly, gets drunk and smashes up half a dozen vehicles on the way home from a jolly good party after drinking too much and all the rest of it, and does not report it to the police, what should happen? Would the police say it was reckless driving together with drunk-driving and dangerous driving? All sorts of things come to mind that that person could be charged with. What does the minister think?

Mrs L.M. HARVEY: I will not give the member an opinion. I am not a police officer and I do not have experience in defining what people should be charged with given the time, place and circumstances of each individual offence.

Mr R.F. Johnson interjected.

Mrs L.M. HARVEY: However, if he will allow me to finish my answer, I have some information from my advisers. They say that this is dependent on the circumstances of any particular offence. A driver could be drunk, for example. If they were not proved to be drunk, they could be charged with reckless or dangerous driving. A range of offences could apply in the circumstances the member has described, but it would come down to police being able to put forward a case that they could then take to court that would satisfy the court around precedent on establishing whether the driving was dangerous, reckless or something else. That is the advice I am given. I am not prepared to offer an opinion; I merely pass on advice from the officers I have sitting with me, who are experienced in prosecuting charges.

Dr A.D. BUTI: I think the minister may be getting the issue of whether someone can be prosecuted mixed up with the definition. The definition of "reckless manner" is not relevant to the facts. Whether someone is going to be prosecuted, the evidence is important but what is a legal definition? The minister said that a long list of cases deal with it, so there must be a definition. What is the definition of "reckless manner"? Is it based on a standard test? What is it?

Mrs L.M. HARVEY: I will refer the member to the legislation. Proposed section 60(1) states —

> For the purposes of this section, a motor vehicle is driven in a ***reckless manner*** if it is driven in a manner (which expression includes speed) that is inherently dangerous —

Dr A.D. Buti: What does that mean?

Mrs L.M. HARVEY: "Inherently dangerous" is just a test of inherently dangerous, member —

> or that is, having regard to all the circumstances of the case, dangerous to the public or to any person.

Dr A.D. Buti: But what is the test?

Mrs L.M. HARVEY: That is the definition.

Dr A.D. Buti: What is the actual test that determines whether something is inherently dangerous?

The ACTING SPEAKER: Member for Armadale.

Dr A.D. BUTI: Just reading out the definition in the bill is not telling me what it actually is. What does the minister mean by "inherently dangerous"? Is it determined by what the reasonable bystander would determine? What actually is it?

Mrs L.M. HARVEY: My advisers, who are experienced in these matters, tell me that they would look at the circumstances of an individual case. The officer would form a view whether the motor vehicle was being driven in a reckless manner. That would be reviewed, obviously. Charges will be laid consistent with the way this legislation will work. Ultimately, the test of whether that officer's assessment of the facts of that case in determining whether the vehicle was driven in a reckless manner was correct would be determined by a court. The officer who lays the charge ultimately makes the decision whether the motor vehicle was being driven in a reckless manner based on the circumstances and on whether it is inherently dangerous "having regard to all the circumstances of the case, dangerous to the public or to any person". That is the advice I have received.

Dr A.D. BUTI: The minister has just given me a response that would suggest that the police are the judiciary.

Mrs L.M. Harvey: No.

Dr A.D. BUTI: The police decide whether they will lay a charge, obviously.

Mrs L.M. Harvey: That is right—that is what I said.

Dr A.D. BUTI: No.

Then the matter goes to court. What is the yardstick for the court to decide? The police will form their own opinion and they will lay a charge, but it is up to the court to determine whether that charge is sustained. The minister said there is a long list of legal cases on this issue. I assume that long list of legal cases that the minister referred to will tell us the definition. If they do not contain a definition, what criteria or factors will be taken into consideration in determining whether a charge will be sustained?

Mrs L.M. HARVEY: Clause 6 obviously needs to be read in context. I have read proposed section 6(1) out before, but I will do it again because I think it makes sense if it is looked at together. It states —

> For the purposes of this section, a motor vehicle is driven in a ***reckless manner*** if it is driven in a manner (which expression includes speed) that is inherently dangerous or that is, having regard to all the circumstances of the case, dangerous to the public or to any person.
>
> (1A) A person commits an offence if the person wilfully drives a motor vehicle in a reckless manner in —
>
> (a) a confiscation zone; or
>
> (b) any other place.

This needs to be read in context.

Dr A.D. Buti: That is not exhaustive, is it?

The ACTING SPEAKER: Yes, member for Armadale.

Dr A.D. BUTI: Proposed section 60(1A) states —

> A person commits an offence if the person wilfully drives a motor vehicle in a reckless manner in —
>
> (a) a confiscation zone; or
>
> (b) any other place.

There is a definition for "confiscation zone" but "any other place" could be anywhere. Surely there must be legal precedents on this. The minister could say that speed is one criterion. She has included that in the legislation. What other factors will the judge take into consideration in determining whether someone is driving in a reckless manner that is inherently dangerous et cetera?

Mrs L.M. HARVEY: Clause 6 will amend section 60. Section 60 was formerly reckless driving. That has been changed to driving in a reckless manner. Proposed section 60 (1) replaces the prior section 60(1). It really just redefines reckless driving in the context of driving in a reckless manner. It cross-references to this new offence that refers to confiscation zones. Precedent already exists under the Road Traffic Act. The court would make a determination based on all the circumstances of the case about whether the driving was dangerous to the public or to any person. The court would consider whatever was happening with the driver in that vehicle at that time the driver incurred the charge.

Dr A.D. BUTI: I will not labour that point. Does the member for Hillarys have a point on that?

Mr R.F. Johnson: Yes.

Dr A.D. BUTI: I will let the member speak and then I will raise another matter.

Mr R.F. JOHNSON: I want to come back to something that was brought up earlier. The minister is making such a thing about a confiscation zone being a school zone. That is the main criterion being used in the legislation. I know that we should not go backwards, but I want to refer to a previous clause. The definition of "confiscation zone" states —

> (a) in relation to a vehicle, a length of road where the speed limit applicable to the vehicle …

That is any road that has a speed limit! I think every road in Western Australia has a speed limit. What is the difference? What is the legal difference between a road that has a speed limit and one that is applicable to any vehicle? Sometimes trucks have different speed limits from motor cars—that is any road. If a confiscation area is only a small area, why does the definition state it is any length of road? Why are we bothering to highlight school zones, when it applies, as I see it, to any length of road? That is what is in the legislation. Why does it not just state "any length of road"? The definition of reckless driving is quite clear—it is 45 kays an hour over the

limit, normally. In that case, confiscate the vehicle. The minister could do that if she wanted. Why does she not just say that instead of confusing members of the public with all this added hyperbole?

Mrs L.M. HARVEY: I know the member is confused but we actually canvassed the definition of "confiscation zone" earlier. In this legislation, the vehicle can be impounded if the motor vehicle has been driven in a reckless manner in a confiscation zone. The confiscation zone can either be a school zone or a built-up area of 50 kilometres an hour or another area signposted with a lower speed limit.

Mr R.F. Johnson: It says "or the length of road".

Mrs L.M. HARVEY: Member, we have covered clause 4(1). We are now on clause 6. I am not really quite sure what exactly the member is asking because we previously defined "confiscation zone" when we considered subclause (1).

Mr J.R. QUIGLEY: Clause 6 of course amends section 60. I am interested in the juxtapositioning of the definition of "driving in a reckless manner" in clause 60 with that of "dangerous driving". Dangerous driving is anyone who drives a vehicle dangerously. I will pick up the section. "Dangerous driving" means—

> Every person who wilfully drives a motor vehicle in a manner (which expression includes speed) … is, having regard to all the circumstances of the case, dangerous to the public or to any person commits an offence.

That is in section 61 of the Road Traffic Act. Section 60 of the current act, which is what clause 6 is amending, provides that any person who wilfully drives in a dangerous manner is guilty of reckless driving. The new definition of driving in a reckless manner under proposed section 60(1) takes away the element of intent. The element of intent, which is the step-up element that takes "dangerous" to "reckless", is now not included in the definition of "reckless manner". Can the minister please explain to me what is the difference between section 60(1) as it will be amended by clause 6, and the definition of "dangerous driving"—that is, why has the minister seen fit to delete from the definition of "reckless manner" the element of intent? The minister should not take me to proposed section 60(1A). That is different. In the definition in proposed section 60(1), why has the element of wilfulness been deleted by the government?

Mrs L.M. HARVEY: The member has asked me to explain the difference in the definition between dangerous driving and driving in a reckless manner. The difference in the definition is that driving in a reckless manner means if the vehicle is driven in a manner, which expression includes speed, that is inherently dangerous. The operative word, which I think is the adjective in point, is "inherently". "Inherently" means that it is a permanent, if you like, or inseparable element of the action. When it comes to dangerous driving, it is driving a motor vehicle, which expression includes speed, that is having regard to all the circumstances of the case dangerous to the public. It goes more to the intent and to whether the inherent nature of the driving makes it fall into a recklessness category rather than a dangerous category.

Mr J.R. QUIGLEY: The minister has referred to a long list of cases that define "reckless" and "dangerous" driving. The High Court has said—as the minister's advisers will confirm—that the objective test for dangerous driving is whether, observed objectively from above, the manner of control of the vehicle was inherently dangerous to any person at all. The minister agrees with what the High Court has said, because she has referred to a long list of cases, and I am relying upon that unnamed long list of cases that the minister has relied upon. Therefore, why has the minister removed the element of intent from the definition of driving in a reckless manner? The minister has not explained why she has removed the element of intent. I will come back to the minister's long list of cases that provide the precedent that establishes the proposition that dangerous driving means anybody who is driving a vehicle that is inherently dangerous to any person on the road. The step-up point to reckless used to be that the person was doing it wilfully—as people do sometimes when they wilfully drive through my suburb and plant their foot at the S-bend. What is the government's intent in eliminating the element of intent?

Mrs L.M. HARVEY: Sorry, member, but what part of this amendment removes the element of intent?

Mr J.R. QUIGLEY: Certainly. If the minister goes to the blue bill, or the consolidated bill, she will notice that the current subclause (1) is marked in red to show that those are the words that will be struck out—it has red lines that strike out the words, "Every person who wilfully drives a motor vehicle". By that amendment, the minister is taking out the element of wilfulness or intent. I am seeking an explanation for the chamber, and for those who will be interpreting this act afterwards, of why the minister is striking out wilfulness. The minister said to me, "I am sorry, member, but what part of the legislation eliminates wilfulness from the definition?" I say to the minister that it is right in front of the minister's nose.

Mrs L.M. HARVEY: I fundamentally disagree with the member. Proposed section 60(1) states —

> For the purposes of this section, a motor vehicle is driven in a ***reckless manner*** if it is driven in a manner (which expression includes speed) that is inherently dangerous or that is, having regard to all the circumstances of the case, dangerous to the public or to any person.

It goes on to state in proposed subsection (1A) —

> A person commits an offence if the person wilfully drives a motor vehicle in a reckless manner in —
>
> (a) a confiscation zone; or
>
> (b) any other place.

The element of intent is defined in proposed subsection (1A). All we have done is clarify the words "reckless manner" as in the actual driving as opposed to the intent, which is further defined in proposed subsection (1A). Therefore, I do not accept that we have removed the element of intent.

Mr J.R. QUIGLEY: Perhaps the minister could help the chamber with this, but in homicide cases there used to be, before Labor amended the laws, wilful murder. We used to have wilful murder, murder and manslaughter. Now we have only murder. That is because the Labor Party accepted the Law Reform Commission's report that said that having an offence of wilful murder enables people to escape that conviction by saying they were not able to form the intent—that is, they were affected by drugs to such a degree that they were incapable of forming the intent. The minister has now drawn the attention of the chamber to the fact that no-one can be convicted under this proposed new section unless there is an element of wilfulness or intent. Will it now be true, as in the case of murder, that if a person by reason of the ingestion of drugs or alcohol, or both, is incapable of forming an intent, they cannot be found guilty of the offence? Is that right?

Mrs L.M. HARVEY: Member, I have no experience and I have not had advice on wilful murder. To give an example, a driver could have a heart attack, and if we looked at the driving at that point in time, we could determine that the vehicle was being given in a reckless manner; however, the person would not be subject to the offence because they did not wilfully drive the motor vehicle in a reckless manner. So, there is an element of intent. That is just one example. All we have done here—if the member goes to the act that we are amending—is take the definition of "reckless driving" and divide it into a definition of a motor vehicle being driven in a reckless manner, and the other portion is around when that would constitute an offence. This is more a drafting convention to separate out those two elements and clarify the legislation.

Mr J.R. QUIGLEY: The minister has her advisers there. If a person is rendered incapable of forming an intention for any reason, does that provide a defence to this proposed new section?

Mrs L.M. HARVEY: Yes, potentially.

Mr J.R. QUIGLEY: If a person is so drunk as to be incapable of forming an intention, the minister's submission to the house is that that is a good defence to this charge. Is that correct?

Mrs L.M. HARVEY: No, absolutely not.

Mr J.R. QUIGLEY: The person is incapable of forming an intention. The minister said that to convict someone, intention would have to be shown. What if the person is so comatose by drugs or alcohol that they medically cannot form an intention? Under the provisions of the minister's amendments, does this not provide a complete defence to the charge; and, if not, why not?

Mr R.F. JOHNSON: I gave a scenario earlier of someone who might have attended a wedding reception and gets blind drunk—blotto drunk—then gets in their car. On the way home, they do not know what they are doing and they smash up half a dozen cars and some property. When they get home, they quickly go inside the house and lock the gate, lock up the house and turn off the lights so that they are not able to be seen. Is that intent? Can intent be proven for that scenario? Is that reckless driving or dangerous driving? We know that it is drunk-driving but unless the person can be breathalysed, they cannot be charged for drunk-driving.

Mrs M.H. Roberts: It would appear that there is some intent to avoid the consequences involved, doesn't it?

Mr R.F. JOHNSON: Indeed, particularly. Let me tell members of a classic case in which a particular person wants to avoid any police patrols, booze buses or breath-testing by police. A person may take a circuitous route—not the quickest way to get home—from, let us say, a wedding reception in Kings Park, for instance, to try to evade and avoid any police detection of the fact that they are blind drunk and have smashed up half a dozen cars. They do not report this to the police at all. They also smash up their own property. Let us say that they are driving a government vehicle and they also smash it up. They get home and lock the car, lock their house, turn off the lights and, to all intents and purposes, they are asleep. A breath test cannot be carried out. Is there intent? Can we prove that there is intent in that sort of situation? I wonder about that because this is a very important piece of legislation. I can assure members that they would have to go a long way to find somebody tougher on drink and drug–drivers than me. I cannot understand why we are going a bit soft here when I tried to get a lifetime ban on drunk and drug–drivers. The minister was more concerned about the perpetrator of the defence than she was about the family of the person who was killed. Was there intent in those cases? I think the minister is going a bit soft.

The ACTING SPEAKER: The question is that clause 6 stand as printed.

Mr R.F. Johnson: There is no answer!

Mrs L.M. Harvey: There was no question.

Several members interjected.

Mrs M.H. ROBERTS: We were waiting for the answer to some questions from the member for Butler. The minister appeared to be discussing the issues raised by the member for Butler with her advisers. In the meantime, the member for Hillarys made a number of points and statements. It appeared to me that the minister was probably more engaged in talking to her advisers than she was in listening to the member for Hillarys. I think it would be helpful if perhaps the minister could start by answering some of the questions put to her by the member for Butler and then perhaps the member for Hillarys might want to re-state some of the questions that he raised so we can get an answer to them.

Mrs L.M. HARVEY: Member, a person cannot use the fact that they were drunk as a defence to get out of a charge of driving in a reckless-manner under this amending legislation.

Mr J.R. Quigley: Why?

Mrs L.M. HARVEY: Nothing has changed with respect to drunk-driving.

Mr J.R. QUIGLEY: With respect, Mr Acting Speaker, we are not dealing with the offence of drunk-driving. No-one is talking about the offence of drunk-driving. We are dealing with driving in a reckless manner. Driving in a reckless manner, of course, leads into confiscation laws and the like. The minister has already confirmed to the chamber that if a person is incapable of forming an intent, that could provide a complete defence to this charge. Have I misrepresented the minister's answer? It is in *Hansard*. I asked the minister clearly before: if a person is incapable of forming an intent, is that not a defence to the charge?

Mrs L.M. Harvey: I said "potentially, yes."

Mr J.R. QUIGLEY: With respect, you did not say "potentially".

Mrs L.M. Harvey: I said, "Yes" and then I said "potentially".

Mr J.R. QUIGLEY: Yes, all right.

Mrs L.M. Harvey: Yes, potentially.

Mr J.R. QUIGLEY: If there is mental incapacity to form the intent, and that mental incapacity is by way of drug or alcohol stupefaction, that will provide a defence to a charge that has an element of intent to it, does it not?

Mrs L.M. HARVEY: My advisers tell me that a person cannot use the fact that they were drunk or under the influence of drugs as a defence for any of these charges.

Mr J.R. QUIGLEY: On what do her advisers give the minister that advice? Upon what case law are they relying on? I want only the simple case citation. The minister has three advisers. The minister is saying that, at law, a person who is stupefied for whatever reason—by drugs or alcohol—cannot use that stupefaction to say that they were incapable of forming an intent. I ask only for the chamber's benefit that we take in that aspect of the law. If the minister does not know, she should say just that she does not know.

Mrs L.M. HARVEY: My advisers apologise but they do not have the case law with them. However, should we get through consideration in detail, I would be happy to provide some evidence of that in my third reading summing up, or provide it to the member under the cover of a written email or something like that in the interim.

Mr J.R. QUIGLEY: Could I offer the minister my white hanky and she could fly it now in capitulation? The minister does not have a clue about this defence, does she? That is the truth, is it not?

The ACTING SPEAKER: The question is that clause 6 stand as printed.

Mr J.R. QUIGLEY: No, I have not finished! Let the record show —

The ACTING SPEAKER (Mr P. Abetz): Member for Butler, you cannot get up again; you have to sit down. You are not allowed to get up again. I only raised the question. The member for Hillarys has the call.

Mr R.F. JOHNSON: The member can get up after I have spoken, but he cannot get up and down like a fiddler's elbow. I want to come back to intent and whether a person can be drunk as a skunk after attending a function and drive home in a 50-kilometre-per-hour speed limit area—suburban streets all have a 50-kilometre-per-hour limit. If a person comes from a wedding reception, say, and they use a circuitous route to get home, which is all in a 50-kilometre-per-hour zone, and they are drunk as a skunk, there must be the participation of intent because they know what they are doing. They are trying to avoid the police by going a much longer way around to get

home. If a person smashes into half a dozen cars and totally wrecks them, and also wrecks a property, and then they go indoors and turn off the lights and shut the gates and try to make out that nothing has happened, surely, there must be intent in that action. Being drunk is simply not enough as a defence against reckless driving. It is more than reckless driving —

Mrs G.J. Godfrey: That's what the policeman just told us.

Mr R.F. JOHNSON: The policeman?

Mrs G.J. Godfrey: That man.

Mr R.F. JOHNSON: No, he did not tell us anything.

Point of Order

Mr J.R. QUIGLEY: If the member for Belmont wants to talk, she kept quiet during the protection of paedophiles debate —

THE ACTING SPEAKER (Mr P. Abetz): Member!

Mr J.R. QUIGLEY: — so if she wants to talk —

The ACTING SPEAKER: Member, that is not a point of order. Please take your seat.

Debate Resumed

Mr R.F. JOHNSON: I will conclude my remarks because I know that the member for Butler wants to carry on. I will reiterate again, again and again that I believe there must be intent and it should be shown in this legislation. If a person is as drunk as a skunk or high on drugs, there is intent to get drunk and intent to take drugs, and there is intent to try to avoid police detection by taking a circuitous route on their way home. There is also intent in not reporting to the police when they smashed up half a dozen cars and smashed up property, and then they ducked inside, turned off the lights, and hid from society. There are an enormous number of offences there.

This is very, very serious. I think we are dealing with that in this clause. We should be.

Question to be Put

Mr J.H.D. DAY: I move —

That the question be now put.

Division

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

Ayes (31)

Mr P. Abetz	Ms W.M. Duncan	Mr A.P. Jacob	Dr M.D. Nahan
Mr F.A. Alban	Ms E. Evangel	Dr G.G. Jacobs	Mr D.C. Nalder
Mr C.J. Barnett	Mr J.M. Francis	Mr A. Krsticevic	Mr J. Norberger
Mr I.M. Britza	Mrs G.J. Godfrey	Mr S.K. L'Estrange	Mr A.J. Simpson
Mr G.M. Castrilli	Mr B.J. Grylls	Mr W.R. Marmion	Mr M.H. Taylor
Mr V.A. Catania	Dr K.D. Hames	Mr P.T. Miles	Mr T.K. Waldron
Mr M.J. Cowper	Mrs L.M. Harvey	Ms A.R. Mitchell	Ms L. Mettam *(Teller)*
Mr J.H.D. Day	Mr C.D. Hatton	Mr N.W. Morton	

Noes (17)

Ms L.L. Baker	Mr D.J. Kelly	Mr J.R. Quigley	Mr B.S. Wyatt
Dr A.D. Buti	Mr F.M. Logan	Mrs M.H. Roberts	Mr D.A. Templeman *(Teller)*
Ms J.M. Freeman	Mr M. McGowan	Ms R. Saffioti	
Mr R.F. Johnson	Ms S.F. McGurk	Mr C.J. Tallentire	
Mr W.J. Johnston	Mr M.P. Murray	Mr P.C. Tinley	

Pairs

Ms M.J. Davies	Ms M.M. Quirk
Mr D.T. Redman	Ms J. Farrer

Question thus passed.

Division

Clause put and a division taken, the Acting Speaker (Mr P. Abetz) casting his vote with the ayes, with the following result —

Ayes (32)

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

Noes (18)

Ms L.L. Baker	Mr W.J. Johnston	Mr M.P. Murray	Mr P.C. Tinley
Dr A.D. Buti	Mr D.J. Kelly	Mr J.R. Quigley	Mr B.S. Wyatt
Mr R.H. Cook	Mr F.M. Logan	Mrs M.H. Roberts	Mr D.A. Templeman *(Teller)*
Ms J.M. Freeman	Mr M. McGowan	Ms R. Saffioti	
Mr R.F. Johnson	Ms S.F. McGurk	Mr C.J. Tallentire	

Pairs

Mr D.T. Redman	Ms J. Farrer
Ms M.J. Davies	Ms M.M. Quirk

Clause thus passed.

Several members interjected.

The ACTING SPEAKER (Mr P. Abetz): Member for Mandurah, I call you.

Several members interjected.

The ACTING SPEAKER: Members, I will be calling people. This is unacceptable conduct in the house.

Mr D.J. Kelly interjected.

The ACTING SPEAKER: Member for Bassendean, I call you for the second time. I am not accepting that conduct.

Clause 7: Sections 60A, 60B and 60C inserted —

Mr J.R. QUIGLEY: I would like to make a couple of comments about clause 7. Although we are dealing with driving at reckless speed and driving in a reckless manner in clause 7, nonetheless, it encompasses and traverses some of the principles that we were dealing with in clause 6. I was very disappointed with the conduct displayed while debating clause 6. The Acting Speaker sat me down, but I now have the opportunity to address the issue in clause 7. I asked the minister a question and she sat there mute. When I rose to say, "Let the record show that in relation to the question I asked—that is, whether stupefaction and the inability to form intention would offer a defence under the amendments to section 60 contained in clause 6", the minister sat there mute. During the division some pretty harsh comments were directed at me across the chamber by the Premier, which in all honesty I thought were unjustified because I had tried to be gentlemanly in my conduct. When the minister sat there dumbstruck and unable to answer the question, I was a gentleman and offered her my white hanky to fly in capitulation. I did not want to keep her here and embarrass her for her lack of knowledge about her bill that she brought forward.

I turn to my question relating to clause 7. It reflects on clause 6 as well, which has passed. The only reason I called the division was that I was very disappointed that we could not further debate clause 6. The minister was so at sea that she imprudently and injudiciously declined my offer of a white hanky to fly at masthead and instead —

The ACTING SPEAKER: Member, I ask you to get to the point of clause 7.

Mr J.R. QUIGLEY: Sure. The Leader of the House had to apply the gag to save the minister because she did not know the detail of her own bill.

I ask this question on clause 7. Clause 7—can I be so bold as to say that this is also in clause 6 but that is another matter—states —

A person commits an offence if the person drives a motor vehicle at 45 km/h or more above the speed limit —

(a) in a confiscation zone; or

(b) on any other length of road.

Why is it necessary to include the words "in a confiscation zone"? Is it not the case that an offence is committed if a person drives at a reckless speed on any road? What is the necessity of proposed section 60A(1)(a) and (2)(a)? Why does it not just encompass the fact that anyone who drives recklessly anywhere on a road is guilty of an offence?

Mrs L.M. HARVEY: This clause needs to be read in conjunction with clause 30, which amends section 80A, and provides that the court in certain circumstances will be able to confiscate vehicles permanently for offences referred to in proposed section 60A.

Mr J.R. QUIGLEY: That is a bit of a circuitous answer. I understand clause 30 and the insertion of soon-to-be section 80A. Why is it necessary to have the differentiation in clause 7 between driving at a reckless speed in a confiscation zone or on any other length of road? Is the minister saying that if someone drives at a reckless speed on any other section of road, the vehicle cannot be confiscated?

Mrs L.M. HARVEY: The advice I am given is that this will assist the court in determining whether the offender could be considered to be on their second strike or their third strike for the impounding offences. Perhaps the member could further clarify his question. I do not understand what his problem is with this proposed section.

Mr J.R. QUIGLEY: I did not say I had a problem; I am seeking clarification. It falls upon me as a member of this Parliament and as a member of the opposition to test, probe and properly scrutinise legislation. What is the legislative advantage of including paragraph (a) in both subclauses (1) and (2) of proposed section 60A—that is, "in a confiscation zone"? Why is it not the case that a person who drives a vehicle at a reckless speed on any road will get their vehicle confiscated? I want clarification of the necessity for paragraph (a).

Mrs L.M. HARVEY: I now understand what the member is asking. Basically, several aspects can be considered as to whether a person can be charged with driving at reckless speed. A person commits an offence if they drive a motor vehicle at a speed of 155 kilometres an hour or more, and then it goes on to other provisions. However, we have introduced a new concept of a confiscation zone, which is a school zone or a built-up area or any other length of road. If the person is driving a motor vehicle at a speed of 155 kilometres an hour or more, their vehicle can be impounded on the first, second or third offence, depending on whether it is driven in a confiscation zone or on any other length of road. It is just to clarify that the elements of the previous reckless driving offence still exist, but we have separated them to ensure that they cover off on this newly defined confiscation zone that we will introduce with this legislation.

Mr J.R. QUIGLEY: Am I given to understand from the minister's answer that if a person drives at a speed of 155 kilometres an hour or more on any length of road, that their vehicle is not liable to confiscation?

Mrs L.M. HARVEY: Not necessarily. It can be impounded, or if it is driven in a confiscation zone, it can be permanently confiscated on a first offence by application to the court, if this legislation goes through.

Mrs M.H. ROBERTS: I would like the minister to explain why 155 kilometres an hour has been chosen. Let us say, for example, that someone is driving at 155 kilometres an hour in a 40-kilometre-an-hour school zone, which is a confiscation zone. That means that they would be driving at 115 kilometres an hour above the speed limit. If a person is driving at that speed in one of these other 50-kilometre-an-hour zones, they would be driving at 105 kilometres an hour above the speed limit. What is the relevance of 155 kilometres an hour? That seems to be an awful lot. Why is 155 kilometres an hour a trigger? These are incredible amounts over the speed limit in a confiscation zone. My thinking is that surely the penalty should step in at a much lower speed than 155 kilometres an hour. Why has the minister chosen 155 kilometres an hour?

Mrs L.M. HARVEY: I did not choose the figure of 155 kilometres an hour; it was already in the legislation. I do not know who decided on that figure—I was not the minister at the time—but driving at a speed of 155 kilometres an hour or more was put in there, as I understand it, for areas of open road. If a person is driving a vehicle at that speed on an open road then that is the point at which their vehicle can be subject to impounding. We have introduced this confiscation zone in which people can be charged with driving in a reckless manner at speeds much less than that and have their vehicle permanently impounded, but should this offence happen on any other length of road, the individual is still subject to the impounding offence, which is consistent with the original legislation. We are not changing that component of the legislation except to ensure that we allow for permanent confiscation in a confiscation zone under those circumstances.

Mrs M.H. ROBERTS: I draw the minister's attention to her second reading speech. Just before I do that, I point out that this is the minister's bill. All these words now become hers. She has chosen these figures. She has changed some elements of the bill and she has chosen not to change others. These figures become the minister's figures. This is the bill that the minister has put before the house. This bill refers to 155 kilometres an hour. The minister could have put in a figure of 145, 135, 120 or some other figure in there but she has chosen to, as the minister has said, leave it at 155. In the minister's second reading speech, she said with respect to speed limits —

> First, following a conviction of a first hoon offence, a court will be empowered to order the confiscation of a vehicle used to commit the offence if the offence was committed in an active school zone; or the person drove the motor vehicle on a road at 90 kilometres an hour or more above the speed limit; …

The second reading speech can be used in the interpretation of legislation and the like. The minister put out a media statement to similar effect that, basically, if people were driving at 90 kilometres an hour or more above the speed limit they would be prosecuted under the legislation that the minister was putting before the house. That was the minister's promise. She told people this in her second reading speech and through the media. If a person is driving at 90 kilometres an hour or more above the speed limit, they are gone. That is the import of what the minister has been saying. The minister specifically mentioned a "confiscation zone"—these are her words—which has not appeared previously. Confiscation zones are principally, although not exclusively, areas with a 40-kilometre-an-hour speed limit. If we add 90 kilometres an hour to a 40-kilometre-an-hour school zone, we come up with 130 kilometres an hour. If we add 90 kilometres an hour to a 50-kilometre-an-hour residential zone, we come up with 140 kilometres an hour. The minister has given people the impression that she is toughening up the legislation so that people who drive 90 kilometres an hour or more above the limit will lose their vehicle and have it impounded, yet we find that there is this figure of 155 kilometres an hour and the minister has made some reference to how that was in the legislation before and it applied to open roads. New section 60A under clause 7 specifically refers to confiscation zones. Although it keeps the figure of 155 kilometres an hour, the minister, in her second reading speech and in her various announcements, has said if a person drives at 90 kilometres an hour or more above the limit that their vehicle will be impounded. I again ask why the minister has left this figure of 155 kilometres an hour in here and why that particular number is relevant.

Mrs L.M. HARVEY: As I said previously, we are not changing all the elements of driving in a reckless manner. The current regime is that if a person is driving at 155 kilometres an hour or more on any open road, they are subject to the existing hoon laws, which means for a first offence their vehicle is impounded for 28 days. If a person drives at 155 kilometres an hour on any road and is charged with a second offence, their vehicle is impounded for 90 days. A person would have to get to a third offence before their vehicle is permanently confiscated. We are now saying that if a person drives at 155 kilometres an hour, as one aspect of reckless driving, in a confiscation zone, there is another element to this offence; if it happens to be 90 kilometres an hour or more over the speed limit, we can apply to the court to have that person's vehicle impounded permanently on the first offence. That is the difference. We have gone from 28 days for a first offence as the only option, to permanent confiscation for people who choose to drive at 155 kilometres an hour or any road, and if that occurs in a confiscation zone they can lose their vehicle forever on a first offence—that is what we are changing. We are not changing the elements of reckless driving, but if that occurs in certain circumstances, we will take the person's vehicle permanently on a first offence.

Mr R.F. JOHNSON: The only reason a person is going to get done for driving at 155 kilometres an hour is if they are driving on a road with a 110-kilometre-an-hour speed limit such as Bussell Highway, Forrest Highway or even on the freeway. Unless things have changed an awful lot, I thought that —

Mrs M.H. Roberts: Even then you have to drive at 265 kilometres an hour.

Mrs L.M. Harvey: No.

Mr R.F. JOHNSON: I do not think so. It used to be the case that reckless driving, which was a hoon offence, occurred if a person drove at 45 kilometres an hour over the speed limit, no matter where it happened. If it happened on a highway with a 110-kilometre-an-hour speed limit, and the person was driving at 155 kilometres an hour that would be 45 kilometres an hour over the speed limit. If a person drove in a 70-kilometre-an-hour zone at 45 kilometres an hour over the speed limit, then that was reckless driving and a serious hoon offence. From what I can gather from the minister and the member for Midland, a person has to be driving like a bat out of hell in a confiscation zone, which is a school zone—that is the main confiscation zone. What is the lowest speed limit that somebody can travel at through a confiscation zone—a school zone—before an application is made for their vehicle to be impounded or even confiscated? What is the trigger? The member for Midland said that they have to be driving at 90 kilometres an hour over the 40-kilometre-an-hour speed limit. That would be ridiculous if that were the case. As I understand it, the other confiscation zone in which to be driving at that excessive speed limit would be in a 50-kays-an-hour area, as is the case in most suburban roads. Can the minister explain exactly the cut-off

figure for when reckless driving applies and when police can apply to have a vehicle confiscated rather than simply impounded? I am fully aware that a vehicle can be impounded on the first, second and third offences. Can the minister tell us at the same time how many vehicles have been confiscated on a third offence? How many people have committed a third offence for the hoon driving that the minister is talking about now?

Mrs L.M. HARVEY: Thank you, member. I am not sure I have information on how many vehicles have been confiscated on a third offence. I do not think there are very many. Generally, when people get to the second offence, they learn their lesson and they do not want their vehicle to be permanently confiscated. To clarify the member's question, I do not think the member is understanding how this will work. Firstly, there is a definition for driving in a reckless manner, which we have been through. It states —

> … if it is driven in a manner (which expression includes speed) —

We will come to that —

> that is inherently dangerous or that is, having regard to all the circumstances of the case, dangerous to the public or to any person.

That is driving in a reckless manner.

Mr R.F. Johnson interjected.

Mrs L.M. HARVEY: Let me finish. If that occurs in a confiscation zone or any other place, and it fits the criteria, we can apply to have the vehicle confiscated on the first offence. That is what this amending legislation does. There are other elements to reckless driving. "Driving at a reckless speed" is already defined in the legislation. We are not seeking to change all components of this. If someone in an active school zone where the speed limit is 40 kilometres an hour is driving at 80 kilometres an hour or more, they will be driving recklessly and the vehicle will be subject to impoundment on the first offence. This legislation will enable that. If someone is driving at 155 kilometres an hour on any road—most of our roads are limited to 110 kilometres an hour—they will be 45 kilometres over the speed limit and their vehicle could be subject to an impoundment offence. Whatever the speed limit anywhere in our network, if someone is driving at 90 kilometres an hour over the posted speed limit, they will be subject to having their vehicle permanently confiscated on a first offence. We have added another element to it. We are leaving the existing provisions of reckless driving, and adding a component that allows for permanent confiscation on a first offence if it is in a built-up area or a school zone. We are also saying that if someone travels at 90 kilometres an hour or more over the speed limit, we will confiscate their vehicle permanently on the first offence.

Mr R.F. JOHNSON: How many people have been found guilty of or charged with driving at 90 kilometres an hour over the speed limit, not at 90 kilometres an hour, as the minister just said, in either a school zone or another built-up area, which has a 50-kay-an-hour limit? How many people have been caught doing at that reckless speed in a school zone? I think there would be very, very few. They might be doing 40 kays an hour more but I cannot see them doing 90 kays an hour more. If there are, please tell us how many.

Mrs L.M. HARVEY: I am happy to, member. I am thankful that this is a rare occurrence. In the 2013–14 financial year, I believe there were around 10, but I do not have the exact figure.

[Quorum formed.]

Mrs L.M. HARVEY: I am advised, member for Hillarys, that in the 2015–16 year, eight vehicles were permanently confiscated for a third hoon offence.

Mr R.F. Johnson: It was simply a third hoon offence; they were not necessarily driving at 90 kays an hour over the speed limit.

Mrs L.M. HARVEY: No, because this is new; we are introducing it with this legislation.

Mr R.F. JOHNSON: Yes; it is simply a hoon offence. If they were spinning the wheels and leaving some tyre marks on the road, screeching the tyres or doing doughnuts in someone's street, that would be a third hoon offence. They would not necessarily have their cars impounded for driving recklessly or dangerously in a school zone. They are losing cars already, I think, for hoon offences, which I do not have any problem with, but they are not exactly driving recklessly in the sense that they are doing 150 kays an hour over the limit on a highway or 90 kays an hour over the limit through a school zone. I believe hardly anyone would drive at 90 kays an hour in a school zone. If that has happened, please tell us how many times.

Mrs L.M. HARVEY: At I said, member, I do not have the figures for that, but I know, for example, in the school zone of one of my local primary schools, St John's Primary School on Scarborough Beach Road, in a 40-kilometre-an-hour school zone, a crossing guard had the flags up and an individual was clocked driving at 158 kilometres an hour. That is how fast they were driving through that zone when the crossing guard had the

flags up. If this legislation had been in place at that point in time, we could have impounded that vehicle and confiscated it permanently on the first offence. That is what we are endeavouring to do. It is rare but when it happens, we want to be able to take the vehicle from the person permanently.

Mrs M.H. ROBERTS: That leads to the point I was making previously. The speed of 155 kilometres an hour in a school zone seems to be a very generous speed to trigger reckless driving in a school zone. I believe the member for Hillarys asked the minister what is the minimum speed someone can be travelling to trigger a confiscation in a school zone. For the purpose of the answer, she can give varying answers if she wants to, but I am interested in a 40-kay-an-hour school zone. Can the minister advise what speed in a 40-kay-an-hour school zone would trigger the confiscation of a vehicle under the legislation she has brought before this house? How many kilometres an hour above 40 kilometres an hour would the person have to do before triggering confiscation of the vehicle?

The next point I want to get to relates to section 60A at clause 7 concerning the figure of 155 kilometres an hour. The minister said that if this legislation had been in place when someone was driving through a school zone at 158 kilometres an hour, that would have triggered an offence and the car could have been confiscated. Does someone have to drive at 155 kilometres an hour to have their car confiscated? I certainly agree that someone who drives through a 40-kilometre-per-hour active school zone at 155 kilometres an hour should have their car confiscated. The question I put to the minister is: why should someone who drives through a 40-kilometre-an-hour active school zone at 110 or 120 kilometres an hour not have their car confiscated?

Mr R.F. Johnson: Or 90.

Mrs M.H. ROBERTS: Or a lower figure. I started by asking the minister why 155 kilometres an hour was chosen. The minister answered that it was in previous legislation and so forth, but this notion of a confiscation zone was not in previous legislation. One of the confiscation zones is a school zone. Proposed section 60A(1)(a) is "in a confiscation zone; or". I would really like some clarification about that. How many kilometres an hour does one have to do in a 40-kilometre-an-hour active school zone in order to have one's car confiscated? How many kilometres an hour does one have to do in a 50-kilometre-an-hour zone to trigger one's car being confiscated? With respect to reckless driving, what is the minimum number of kilometres an hour one would need to travel at in a 40-kilometre-an-hour school zone in order to trigger the offence of driving at a reckless speed? What is the minimum number of kilometres an hour one would need to travel in a 50-kilometre-an-hour residential area to trigger the offence of driving at a reckless speed?

Mrs L.M. HARVEY: I reiterate that there are two components to this. Confiscation for a first offence can occur for speeding only or it can occur for driving in a manner that is inherently dangerous; that is, having regard to all the circumstances of the case, it is dangerous to the public or any person. We have put this around the activity of the driver. For example, if the driver was fishtailing or doing doughnuts or something —

Mrs M.H. Roberts: I am aware of all that. I am asking if the only factor is speed.

Mrs L.M. HARVEY: If the only factor is speed, for a permanent confiscation in a school zone the offender would need to have driven at 85 kilometres an hour. In a 50-kilometre zone, they would need to have driven at 95 kilometres an hour. That is for speed alone.

Mrs M.H. Roberts: Is that for confiscation or reckless driving?

Mrs L.M. HARVEY: That would be driving at a reckless speed in a confiscation zone. It would enable police to apply for permanent confiscation of the vehicle. I have some figures around the number of people who have infringed; that is, who have driven in excess of 45 kilometres an hour in a school zone. In 2014, that number was 170; in 2015 there were 156; and up until September this year, 128 people have been charged with driving at 45 kilometres an hour or more in a school zone. Our election commitment was to enable the permanent confiscation of vehicles in those circumstances. Should this legislation pass through this Parliament, we could be looking at upwards of 100 to 170 individuals' vehicles being permanently confiscated on a first offence as a result of their driving behaviour.

Mrs M.H. ROBERTS: What is the minimum reckless speed that a person can be convicted of; that is, for someone driving in a school zone?

Mrs L.M. Harvey: Eighty-five kilometres an hour.

Mrs M.H. ROBERTS: Is that irrespective of whether the school zone is a 40, 50, 60 or 70-kilometre-an-hour zone?

Mrs L.M. Harvey: It is 45 kilometres an hour or more above whatever the school zone limit is. For 40 kilometres an hour, it would be 85 kilometres an hour.

Mrs M.H. ROBERTS: Can the minister explain why proposed section 60A(1) states —

> A person commits an offence if the person drives a motor vehicle at a speed of 155 km/h or more —
>
> (a) in a confiscation zone; or
>
> (b) on any other length of road.

Why does it state 155?

Mrs L.M. HARVEY: In effect we have covered it twice. Proposed section 60A(2) clarifies it. It states —

> A person commits an offence if the person drives a motor vehicle at 45 km/h or more above the speed limit —
>
> (a) in a confiscation zone; or
>
> (b) on any other length of road.

The threshold for a 40-kilometre-an-hour school zone is 85 kilometres an hour or other driving that, by its nature, is inherently dangerous. So there are other criteria; it does not just have to be speed. It could be 85 kilometres an hour. Anything above 85 kilometres an hour in a school zone would result in permanent confiscation. However, if that driving is at 155 kilometres an hour or more on any other length of road, the vehicle could also be permanently confiscated on a first offence.

Mrs M.H. ROBERTS: I do not know; maybe the minister might have joined the dots. Either the member for Armadale or the member Butler asked the question in the first instance. I think it was the member for Butler. Proposed section 60A(1)(a) states —

> in a confiscation zone; or

It appears to me that confiscation zones are dealt with at subsection (2). If someone is driving at 45 kilometres an hour or more in a confiscation zone, surely that is all that is needed to trigger the offence of driving at a reckless speed. It seems very confusing to insert paragraph (a) "in a confiscation zone". Whenever the minister provides an explanation about 155 kilometres an hour or more, she refers to something other than a school zone. I am not sure whether the minister has the point that we have been raising with her for 15 to 20 minutes. There does not seem to be any utility at all in saying that a person has to have driven at a speed of 155 kilometres an hour in a confiscation zone. It would seem that the relevant figure for a confiscation zone, as the minister said to me, is travelling at 45 kays or more above the speed limit. The minister can tell me if she knows of any, but I am not aware of any roads that would meet the criteria of "confiscation zone" that are posted above 70 kilometres an hour. Are there any confiscation zones posted at 70 kays an hour or more? Seventy plus 45 equals 115. The speed of 155 kilometres an hour seems very high. I do not want the same answer: "That applies to 110-kay zones or something." No—proposed section 60A(1)(a) specifies "in a confiscation zone". The minister cannot say that that was already in the legislation. It clearly was not already in the legislation because confiscation zones are new in this bill. I am hopeful that the minister may finally understand why we are questioning proposed paragraph (a). If there is a reason, please let us know; otherwise it needs to be deleted.

Mrs L.M. HARVEY: The member raises an important point. In actual fact, should a person drive at 45 kilometres an hour or more above the speed limit in a confiscation zone, their vehicle could potentially be impounded on a first offence. Proposed paragraph (a) is in fact not required because that offence will be covered under proposed section 60A(2)(a). I will seek advice about whether it would be appropriate to delete that proposed paragraph. It may be needed to cover off. In the event that a school zone in the future has a 110-kilometre-an-hour limit, we may leave it there. I will confer with my advisers. My advisers have said that the reason it is drafted in this way is for consistency in the act. That is why these two provisions have been put under the different components of the speed-related components of reckless driving. I am inclined to leave it as is, because it does not detract from the opportunity or the intent of the legislation, which is to allow for permanent confiscation of a vehicle on a first offence when it is in a school zone or a built-up area or under these other provisions. I do not propose to amend it. I believe the point the member is driving at is that proposed section 60A(1)(a) is not required at this point in time to be specified.

Mrs M.H. ROBERTS: In fact, I do not think the whole of proposed section 60A(1) is necessary. I have just conferred with the member for Armadale. Proposed section 60A(2) states —

> (2) A person commits an offence if the person drives a motor vehicle at 45 km/h or more above the speed limit —
>
> (a) in a confiscation zone; or
>
> (b) on any other length of road.

If we are talking about futureproofing, if the speed limit in the confiscation zone happened to be 110 kilometres an hour—which I think would be incredibly unlikely—it would be a simple matter of arithmetic to add 110 and 45. It would still be 45 kilometres an hour or more above the speed limit. Unless the minister can provide an argument as to any utility for proposed section 60A(1)(a) and (b), I will signal my intention to move the deletion of those words.

Mr R.F. JOHNSON: This is the point I was trying to make earlier. The existing legislation is that it is reckless driving and confiscation will occur if a person drives at 45 kilometres an hour, or more, over the posted speed limit. As I understand it, that would happen under this legislation whether in a confiscation zone or on any other road. Therefore, proposed section 60A(1)(a) and (b) is superfluous. It is covered adequately in proposed section 60A(2)(a) and (b). It is just a repetition of what is already there. We do not need the words "155 kilometres an hour or more". That is just confusing in my view. I think the minister appreciates that. The minister is saying that she wants to be consistent. It is quite simple. All the minister has to do is delete proposed section 60A(1)(a) and (b) and I think members on this side would be happy. It is there already. The words "45 kilometres an hour or more" in proposed section 60A(2) cover everything that is contained in proposed section 60A(1)—they really do. I can understand why the member for Midland has given notice that she would like to delete those words, and I do not blame her. The member for Armadale sees it as well. He is a lawyer. I listen very carefully to what he says. The minister says there is some consistency. There is no consistency at the moment between this bill and other bills. This is a standalone bill as I see it. This is something very new. I do not oppose this bill. I am more than happy to get tough on drivers who may cause death and serious injury on our roads—very much so. However, I do not want to see legislation that is not good legislation. I think this proposed section is seriously flawed. The minister should either move to delete those words or let the member for Midland do that.

Dr A.D. Buti: Would we not also get tougher legislation if we did delete those words?

Mr R.F. JOHNSON: Yes, I agree. The legislation would be much tougher if we deleted those words and had as the main part of this bill proposed section 60A(2), which is about driving recklessly. It has always been 45 kilometres an hour or more over the posted speed limit. Why are we seeking to change that and create confusion in the minds of motorists about what reckless driving is? I hope the minister will accept an amendment from the member for Midland to delete proposed section 60A(1)(a) and (b) and then renumber proposed subsection 60A(2), which covers all of what is needed in proposed section 60A(1)(a) and (b) at the moment.

Mrs L.M. HARVEY: I thank members. This demonstrates the importance of having legislation scrutinised by Parliament. I have sought advice from the Clerk, and I am having an amendment drafted to delete proposed section 60A(1)(a). That provision is not required, because that particular offence will be covered by proposed section 60A(2)(a). That is what I am proposing, and if members can be patient with me, I will get that advice.

Dr A.D. BUTI: I am wondering why the minister would not also delete proposed paragraph (b), because the same logic applies to that. The minister should just delete proposed section 60A(1) in total. It sees silly to leave with it with just proposed paragraph (b).

Mrs M.H. ROBERTS: I concur with the member for Armadale. I would suggest that lines 14 to 17 be deleted—that is, that all of proposed subsection (1)(a) and (b) be deleted—because that is virtually replicated by proposed subsection (2)(a) and (b). I make the point that we would better futureproof this legislation if we had only proposed subsection (2). I say that because from time to time the proposition is put that the maximum speed limit on Western Australian roads should be 100 kilometres an hour and not 110 kilometres an hour. Many other states have a maximum speed limit of just 100 kilometres an hour, whereas we have a maximum speed limit of 110 kilometres an hour. If, for example, a government in 10 years' time wanted to make the maximum speed limit 100 kilometres an hour, the 155 kilometres an hour would be illogical and it would need to be amended to 145 kilometres an hour. The words "45 kilometres an hour" in proposed subsection (2) are the relevant factor here. Therefore, minister, my suggestion is that is lines 14 to 17 can be and should be deleted.

Mrs L.M. HARVEY: I move the following amendment —

Page 5, line 16 — To delete the line.

This amendment will delete the words —

(a) in a confiscation zone; or

The reason for this amendment is that those words are well and truly covered under proposed subsection 2(a). However, my advisers have said that this other potential permanent impounding offence on any other length of road should remain. In their view, that would futureproof the legislation in the event that, for example, a future government were to lift the speed limit, as we have seen in the Northern Territory. That is not something that would ever happen on my watch. The road statistics in the Northern Territory pretty much prove that that would not be

a sensible thing. However, the officers and my advisers have said that it would be prudent to leave proposed paragraph (b) in the bill. The confiscation zone is well and truly covered under proposed section 60A(2).

Mr R.F. JOHNSON: I am pleased that the minister has seen some sense and has moved this amendment to delete line 16. However, to be honest, the minister has not given any logical reason for why she will not accept the suggestion put by the member for Midland, the member for Armadale and me to also delete proposed paragraph (b). I cannot accept the argument that in 10 years' time, someone might be mad enough to increase the speed limit on some roads from 100 kilometres an hour to 110 kilometres an hour. We are talking about way in the future. We do not need to do that. We need to look at today and the near future, I would suggest. A lot of things can happen between now and then. This provision is completely superfluous.

Both of those provisions are under proposed section 60A(2); the minister is basically repeating it, except that she is taking away where it includes 155 kilometres an hour. That could be completely irrelevant. However, if 45 kilometres an hour over the posted speed limit is stated, at the moment, that covers what the minister is trying to get with the inclusion of 155 kilometres an hour. A confiscation zone is a confiscation zone. If someone travels at more than 45 kilometres an hour over the speed limit in a confiscation zone, they will lose their vehicle. That is fine; nobody has an objection to that. But, for goodness sake, if we are going to tidy up this legislation—that is the role of this house and its members—this is a flaw in the legislation, although some members may not like it. It is a flaw and I think that paragraph (b) on the second line should be deleted. I would like to move an amendment to the amendment to add —

Mrs L.M. Harvey: Can I just explain why I am not deleting the second line so that you can, perhaps, reconsider it?

Mr R.F. JOHNSON: The minister already has.

Mrs L.M. Harvey: I have some further information that might, perhaps, inform your —

Mr R.F. JOHNSON: I will sit down so that the minister can get up and give her reasons why she does not want to listen to what we are saying. If it sounds reasonable, perhaps members on this side of the house will go along with it. However, I have to tell the minister that she will have to be very convincing.

Mrs L.M. HARVEY: I think the member will agree that I have agreed to amend this legislation in response to the member for Midland's pick-up that the provision is not required. The reason my advisers have given me for leaving in the provision of an offence with a speed limit of 155 kilometres an hour or more on any other length of road is that, in certain parts of the state, there is some ambiguity in the speed limit. Although the default speed limit on any open road is 110 kilometres an hour, not every road is signposted. Having this provision of 155 kilometres an hour as a permanent impound offence makes it very, very clear that, on any road in Western Australia, if a person is driving at that speed limit or above, their vehicle could be subject to permanent confiscation on the first offence. That is why my advisers have said to me that the provision should remain in the legislation, but that proposed section 60A(1)(a) is superfluous to requirements and can be deleted without altering the intent of the legislation and ensuring that there is still clarity right across the road network.

Mr R.F. Johnson: Okay, you've convinced me; that's fair enough.

Mrs M.H. ROBERTS: I want to signal that we will support the minister's amendment and I thank her for the explanation. I fully understand that there can be doubt with some roads. For example, some years ago within the Swan Valley, some roads were not signposted. Much to my surprise, I learnt that the speed limit was technically 110 kilometres an hour there because the roads were not signposted; that was the advice I was given. It surprised some people who lived in areas—including as near as Caversham—that there were roads with effectively a 110-kilometre-an-hour speed limit. I campaigned to have those roads signposted because it was inappropriate—a bit like the country catching up to the city—for them to retain a 110-kilometre-an-hour speed limit. It may have been appropriate 30 years ago when Caversham and the Swan Valley were in much more of a country-style area. I moved to have those roads signposted with appropriate speed limits so that it would be clear what speed was appropriate through the back areas of the Swan Valley. I fully appreciate that there may well be country towns with similar issues. There may not be clarity about whether the speed limit is the default 110 kilometres an hour or the default limit in a residential area, which is 50 kilometres an hour. I agree that it is probably better to take the cautious approach and leave in paragraph (b). I thank the minister for moving the amendment, which we will now support.

Amendment put and passed.

Mrs M.H. ROBERTS: Clause 7 has quite a number of other provisions that deal with penalty units. I wonder whether the minister can explain what increases there will be to any penalty units. She will note that there are references to 120 and 240 penalty units and the like. Are there any increases in the length of imprisonment or penalty units; and, if so, for what reason?

Mrs L.M. HARVEY: None of the penalty unit provisions is being increased with this legislation.

Mrs M.H. ROBERTS: I note that the minister is saying that the structure of the penalty provisions has changed. Can she advise why that structure has been changed and how we will benefit from that?

Mrs L.M. HARVEY: I am advised that during drafting, the drafter requested that we change it to this format for consistency with other legislative instruments. It is just that drafting preferences change from time to time.

Clause, as amended, put and passed.

Clause 8: Section 61 amended —

Mrs M.H. ROBERTS: On clause 8, the explanatory memorandum states —

> Section 61(4) provides that where a person is convicted of dangerous driving and had been previously convicted of dangerous driving causing death or grievous body harm, —

I think that should be bodily harm —

> dangerous driving causing bodily harm, or reckless driving (this includes reckless driving speeding), these offences are to be considered as a previous offence for sentencing purposes. The changes made by clause 6, necessitated inserting section 60A (reckless speeding) so that it will be considered as a previous conviction for the purposes of sentencing.

I would like to know whether persons who are convicted can apply for an extraordinary licence and in what circumstances.

Mrs L.M. HARVEY: I am advised that persons who are convicted and have their licences suspended or disqualified under these provisions can apply for an extraordinary licence under the Road Traffic (Administration) Act, but they would have to fit the criteria for extreme hardship—I think that is the terminology used. Yes—extreme hardship.

Mrs M.H. ROBERTS: The minister's answer disappoints me. The fact of the matter is that when people apply for an extraordinary licence, they have to prove extreme hardship and sometimes when they are granted an extraordinary licence, conditions are placed upon them. Although I am not totally against extraordinary licences—I understand that some people are and I understand their reasons for being totally against them—I have a view that if the person involved has not killed someone and has not committed an offence that results in grievous bodily harm to someone and it is a first offence, they should be given the benefit of the doubt and be allowed to apply for an extraordinary licence. I think we all know of circumstances in which young people in particular have lost their licence because they have accumulated points for speeding or other things, but they have not killed or seriously maimed anyone or even had a drink-driving offence. People lose their licences and apply for extraordinary licences. Sometimes they are doing an apprenticeship or working as a bricklayer and they need to get to work at four or five o'clock in the morning when public transport is unavailable. I understand that there are some hardship cases. I also understand that some people have other people reliant on them, be they small children or elderly or disabled people. People can be given extraordinary licences, which should be able to be given for extreme cases of hardship when one of the offences described in proposed section 61 does not apply. Minister, I ask why we would not deny people who have been convicted of dangerous driving causing death or grievous bodily harm the right to apply for an extraordinary licence as an additional penalty.

Mrs L.M. HARVEY: Member, as I said previously, this is about achieving an election commitment to allow for permanent confiscation of a vehicle on a first hoon offence or on a second offence in certain circumstances. That is what we are debating. I did not propose to make any changes to the ability for offenders to apply for extraordinary drivers' licences. That legislation falls under the responsibility of the Minister for Transport. I take on board what the member says. We tightened up the provisions around the ability for individuals to apply and receive extraordinary drivers' licences, and we changed those hardship provisions, but this amending legislation does not propose to do that. I agree with the member that our heart often says that people should be permanently banned from driving, but our heads also know that in many circumstances people in Western Australia need a driver's licences if they are to work. That is the balancing act we need to achieve with legislation, but this amending legislation does not deal with the provisions of the Road Traffic (Authorisation to Drive) Act.

Mrs M.H. ROBERTS: I thank the minister for the explanation. Someone who is convicted of those relevant offences will effectively have that chalked up as a first offence under this impounding act. It would be commonsense to also deny such a person the right to an extraordinary licence. I know this issue has been properly raised with the Minister for Transport, and the Road Traffic (Authorisation to Drive) Act is presumably under his control. However, it is relevant to raise it with the Minister for Road Safety. I hope that this Parliament in the future will certainly toughen up on those who can get extraordinary licences. It is one thing to count it as

a strike for the purposes of the impounding legislation, but we need to go much further than that. Those persons should not be able to get an extraordinary licence. I know that many family members of loved ones who have been killed or seriously injured as a result of drunk-drivers are totally and completely appalled when they see that the driver has been granted an extraordinary licence. From time to time, it is drawn to public attention that some people get those extraordinary licences over and again. I am hopeful that the minister will raise that with the Minister for Transport. I will certainly raise it with my colleagues on our side of the house.

Clause put and passed.

Clause 9 put and passed.

Clause 10: Section 61B inserted —

Mrs M.H. ROBERTS: Proposed section 61B provides a defence for police, firemen, ambulance drivers and the like. I note that the headings and so forth have been changed. I cannot see that there is much practical import there. Why have these amendments been brought about?

Mrs L.M. HARVEY: I am advised that the drafters wanted to split these sections and define them in the legislation as they have been defined through this amendment bill.

Dr A.D. BUTI: Proposed section 61B, "Defence for certain officers driving at reckless speed", states —

> The driver of a motor vehicle is not guilty of an offence under section 60A if —
>
> (a) either —
>
> (i) the driver is on official duty ...
>
> (ii) the driver is on official duty responding to a fire or fire alarm; or
>
> (iii) the driver is on official duty responding to an emergency ...
>
> (iv) the motor vehicle is an ambulance ...

The first three paragraphs refer to the driver X, Y, Z. Paragraph (iv) refers to the motor vehicle, being an ambulance. Why is that drafted in such a manner?

Mrs L.M. HARVEY: I am advised that this is a direct copy and paste from what was previously reflected in the legislation around the defence for certain officers in order to put protections in place for police officers, ambulance drivers and firefighters, for example. It has been separated to reflect the new provisions in the legislation.

Dr A.D. Buti: I am not asking the minister to change it but would she at least concede that it is a bit clumsy?

Mrs L.M. HARVEY: It does seem unusual to refer to the vehicle rather than the driver.

Clause put and passed.

Clause 11: Section 62A replaced —

Mrs M.H. ROBERTS: Section 62A of the Road Traffic Act, "Causing excessive noise or smoke from vehicle's tyres", will be deleted. We are advised that the penalty for the offence will increase from 12 to 30 penalty units to better reflect the seriousness of the offence. What is the current value of a penalty unit and how was it determined that 30 was more relevant than 12?

Mrs L.M. HARVEY: One penalty unit is valued at $50. This penalty was changed to align it with the increased penalty for careless driving. That was part of the Road Traffic Legislation Amendment Bill.

Clause put and passed.

Clause 12: Section 74 deleted —

Mrs M.H. ROBERTS: This clause deletes section 74 of the Road Traffic Act and we are advised it is a drafting change and that the section will be reinserted at proposed section 78F in clause 18. Is there any other import of this change?

[Quorum formed.]

Mrs L.M. HARVEY: I am advised that this was done for consistency in drafting. We wanted to ensure that there was a right for the Commissioner of Police to be heard in proceedings under the impounding and confiscation of vehicles part of that legislation. The content of section 74 has been shifted to 78F so that it is more consistently reflected in these impounding provisions.

Clause put and passed.

Clause 13: Section 78A amended —

Mrs M.H. ROBERTS: Clause 13 is quite involved. It updates and inserts some new definitions, including the definition of "impound", which we are advised has been done to clarify that this means the storage of a vehicle in police custody after its seizure or surrender. I am just wondering about the definition of "police custody", because in many circumstances we know police officers do not actually hold the car in custody, but it is done by an independent provider or contractor. Someone gets contracted to impound the vehicles and police also use contractors to store the vehicles. There is a reference in the explanatory memorandum to sections 60(1a) and (1b) being deleted and replaced by section 60A in clause 6 and that this is a transitional provision to capture offences under the former provisions of the act. How will this transitional provision work and how long will the transition need to be there for? I also note that there are some other changes, but I might just wait for an answer to those first few questions.

Mrs L.M. HARVEY: I am advised that this provision is in the bill for the new section 60A offences. It is there so when a vehicle is to be impounded, consideration can be given to the new section 60A offences and the old section 60 offences can still also be considered for an impounding offence.

Mrs M.H. ROBERTS: This is a long clause with quite a lot of changes. Could the minister explain the offences under proposed new section 60A and give an assurance that people will get done for one or the other and not both? I note also the definition of "reasonable expenses", which is a new provision that the Commissioner of Police can claim only costs that are currently owed to him. Who determines those costs? Are the costs adjudicated or are they what the police commissioner claims?

Mrs L.M. HARVEY: The definition of "reasonable expenses" clarifies that the Commissioner of Police can claim only those costs incurred and that are currently owed to the commissioner. That term is used in other provisions and for drafting consistency has been inserted into proposed new section 78A. We have just debated proposed new section 60A offences, which include driving at a reckless speed in a confiscation zone, and which incur an impounding consequence. This will ensure that proposed new section 60A offences will also be considered in the context of existing section 60 offences when the impounding consequence is considered. I am also advised that there is an indefinite time period for impoundment when these offences are considered on second and third strikes.

Mrs M.H. ROBERTS: Could the minister explain in a little more detail how "reasonable expenses" are determined and what is and is not included, and whether those expenses exclude police time and administration, for example? Do they relate only to towage and storage of vehicles or are other things deemed to be reasonable expenses; and, if so, what is deemed to be a reasonable expense? Could the minister also explain whether there is a set towage fee or can the commissioner charge the actual towage cost? For example, someone's car might be impounded two kilometres from where it will be stored and another person's car impounded 42 kilometres from where it will be stored, so the towage cost would be different in each circumstance. Do the "reasonable expenses" for towage claimed by the commissioner comprise a standard fee or is it the real cost of towage in each instance? Again, is the storage cost a standard fee per day or is it determined somehow differently? Could "reasonable expenses" include other costs such as police time and perhaps administration? If the commissioner, for example, engaged someone with accountancy skills to work out the reasonable expenses, would there be a proportion of that person's time that could be claimed because it was a necessary part of the process?

Mrs L.M. HARVEY: Reasonable expenses would include towage costs. Western Australia Police has contracts with various companies to take these vehicles from the roadside to a storage area. Impoundment includes a storage cost and WA Police has contracts with people to manage those motor vehicles while they are impounded. A WA Police fee covers the administration costs of police.

Mrs M.H. Roberts: Is that a standard fee?

Mrs L.M. HARVEY: It is set by regulations and sits at $136 at present. There is also a contractor fee for the management of the vehicle, which is linked into the storage costs.

Mrs M.H. ROBERTS: I am still waiting for the answer to whether there is a standard towage fee or whether that differs depending on the number of kilometres involved.

Mrs L.M. HARVEY: I am told that we have varying arrangements with different contractors. That is organised by Western Australia Police depending on where the vehicle is. For example, we would have different arrangements in regional areas from what we would have in metropolitan areas. Some companies charge a set fee; some charge a per-kilometre rate. It is not consistent, but we try to limit these costs as much as we can. Obviously, part of the issue with vehicle retrieval from impound is when people cannot pay these costs and are unable to release the vehicle from impound, resulting in WA Police incurring further costs.

Mrs M.H. ROBERTS: Would people potentially be charged different towage fees depending on the contractor that is being used and whether they are charging a per-kilometre rate?

Mrs L.M. Harvey: Yes.

Mrs M.H. ROBERTS: There is a standard administration fee, but the towage fee may differ depending on other circumstances.

According to the explanatory memorandum, subclause 13(2) will insert in section 78A a new provision to address an anomaly in relation to alternative verdicts for an impounding offence driving. The explanatory memorandum states —

> Currently, if a person is charged with a particular impounding offence … but is convicted of an alternate impounding offence … , the Commissioner of Police pursuant to section 80IB is required to refund the impoundment costs. This was not the intent of section 80IB. This new clause resolves this anomaly and the Commissioner will no longer be required to refund the payment made for the release of the vehicle where the driver is convicted of an alternate impounding offence …

I fully understand that if the person is not convicted of any offence, that refund will still apply, but I wonder on how many occasions this so-called anomaly has occurred, in which a person has been charged on one offence and then convicted on another, and despite the fact they have been convicted on another, the commissioner has had to make a refund payment. On how many occasions has this occurred?

Mrs L.M. HARVEY: I am not sure that this has ever occurred. Through examination of this section, we found the anomaly exists. Potentially, if a person is charged with an impounding offence but the trial extends beyond 12 months, the commissioner would be required to refund the impound costs of that vehicle because the person had been charged with the offence but not convicted within the 12-month period. We are changing it to say that it is not the time between the person being charged and convicted that is relevant. We will refund the costs of impoundment and storage et cetera if the person who has been charged with the offence is subsequently acquitted. To my knowledge, this has not occurred; that is, we have not had to refund impounding costs because the period between charging for an offence and conviction had exceeded 12 months. However, the member would understand that once we found that anomaly, we saw this amending legislation as an opportunity to correct that so that we would only ever be refunding impounding costs if the person was acquitted.

Clause put and passed.

Clause 14: Section 78C amended —

Mrs M.H. ROBERTS: Clause 14 amends section 78C of the principal act and we are advised that police will now be permitted to seize an unlicensed motor vehicle in accordance with proposed sections 80O and 80Q, which are to be inserted by clause 44 of the bill.

Proposed section 78C has now become necessary. Was it not previously the case that police were permitted to seize the unlicensed motor vehicle in accordance with proposed sections 80O or 80Q, or does that relate to just bikes?

Mrs L.M. HARVEY: No, this is specifically for the new provision under which police can seize unlicensed motorcycles or trail bikes.

Mrs M.H. ROBERTS: Perhaps the minister can answer a couple more questions for me. The minister has said that any profitable balance from the seizure of those bikes will go to the road trauma trust account. Does that apply to other vehicles? With regard to this clause, I note that proposed section 78C(1) is amended to include an unlicensed motorcycle seized in accordance with proposed section 80O(2), and that a police officer or agent may convey it to a place where it is to be stored. Is the word "agent" defined in any part of this legislation or other legislation?

Mrs L.M. HARVEY: An agent in this circumstance would be a contractor such as one of the towing contractors used for other impounding offences. This provision is about unlicensed motorcycles or trail bikes, so it is different in that although some of those motorbikes are eligible to be licensed to be driven on the road, many of them would not be licensed or fall under a licensing regime. It is somewhat different from a vehicle that would ordinarily be permitted to be licensed. Many of these bikes would never be permitted to be licensed and this allows police to seize that category of motorcycle or trail bike as we know them.

Mrs M.H. ROBERTS: On that point, the explanatory memorandum states —

> Police will now be permitted to seize an unlicensed motor vehicle in accordance with …

I can fully appreciate that the minister wants to be able to seize unlicensed bikes, but is she advising me that previously under the legislation police were not able to seize unlicensed motor vehicles?

Mrs L.M. Harvey: No. They could seize unlicensed motor vehicles but not trail bikes.

Mrs M.H. ROBERTS: The explanatory memorandum states —

Police will now be permitted to seize an unlicensed motor vehicle in accordance with …

Perhaps the explanation should have been that they will now be able to seize an unlicensed motorcycle.

Mrs L.M. HARVEY: I am advised that that was a typo in the explanatory memorandum. Just to be clear, police have the power to seize an unlicensed motor vehicle under certain circumstances such as when it has been used in a hoon offence. With regard to generally unlicensed motor vehicles, police do not have the power of seizure unless the vehicle has been used in the commission of an offence under this act. Trail bikes would fall into that category because police currently have no power to seize trail bikes whether they are licensed or unlicensed. They fall under the other impounding provisions.

Clause put and passed.

Clause 15 put and passed.

Clause 16: Section 78E amended —

Mrs M.H. ROBERTS: Clause 16 will amend section 78E and provide that the Commissioner of Police may recover expenses for which a person is liable under sections 79E, 80H, 80I, 80K or 80LA from a court of competent jurisdiction. We are actually talking about recovering expenses from a court here, so it is different from what we have been talking about previously. It also includes provisions so that the commissioner may seize and dispose of a confiscated motorcycle, and that has necessitated that amendment to section 78E, to enable expenses incurred by the Commissioner of Police in dealing with a motorcycle to be recouped. I am interested in the point that states that the person might be liable under those particular sections and that the Commissioner of Police has the ability to recover expenses from a court. I presume that the commissioner has to make a claim and then the court will adjudicate whether to pay the expenses or potentially in one way or another adjudicate on the expenses. Can the minister provide some advice on that?

Mrs L.M. HARVEY: I am advised that when a vehicle is impounded and then police dispose of it, often an outstanding debt is owed against the storage costs et cetera. This provision allows for the commissioner to make an application to the court by way of a civil proceeding to recover those costs from the individual responsible for the vehicle.

Mr R.F. JOHNSON: When vehicles are impounded, there is a provision whereby the offender can simply write a note to give the vehicle over to the police. Rather than incur 30 days' impounding costs, they can sign a notice straightaway to state that the vehicle is not worth much money, they do not want it, and they do not have enough money to wait 30 days to get it out of the pound, so the police can have the vehicle and dispose of it as quickly as they can. Is that still in place; and, if so, how many people have taken advantage of signing the vehicle over to the police to dispose of, either by way of auction or crushing to use it for scrap metal or whatever?

Mrs L.M. HARVEY: We do not have the figures on the number of vehicle owners who have taken advantage of that, but there is still an opportunity for owners of vehicles when their vehicles are of low value to immediately surrender the vehicle to be disposed of for scrap metal or whatever so they do not incur the storage costs of that vehicle. That provision still sits there. My adviser has a whole iPad full of stats, but he does not have that particular stat with him. I can provide at a later time the number of individuals who have taken advantage of the opportunity to surrender the vehicle to police to dispose of prior to incurring storage costs. I would need to get that to the member at a later point.

Mr R.F. JOHNSON: I am grateful for that. I am very interested in this and I would appreciate it if the minister can get the stats to me at a later stage. There is no mad rush. I would like to know at some stage whether that system is working. It was implemented five or six years ago and it started to work. I just want to know whether it is still working successfully, because it cuts down the cost to the police and the public in respect of storing those vehicles. Very often these people do not have the money anyway. Even if they hand the vehicle over to police, the police might try to send it to an auction. If the sale of the vehicle does not fetch the value of the towing charge—because it can literally go over a few hundred dollars—I note that under this clause, the Commissioner of Police can still claim from the offender any difference between what they actually get for that vehicle, whether it be for scrap or sale at auction. I hope that is still the case. If it is, perhaps the minister can incorporate that information with the other information.

Mrs L.M. HARVEY: With these provisions, we are expanding that opportunity to the owners of vehicles who have their vehicles impounded under a hoon offence. Currently the provision for an accused person to surrender a vehicle for disposal falls only with those who have their vehicle impounded for not having a motor driver's licence. Obviously, some people commit hoon offences in vehicles of low value. We are expanding the provision so that owners of vehicles who have had their vehicle impounded and the vehicle is of low value are also able to surrender them to police for disposal rather than incurring storage costs. We are expanding that provision. As to

the number of individuals who have had their vehicles impounded for no authority to drive, I can make those figures available to the member on the next day's sitting.

Clause put and passed.

Clauses 17 and 18 put and passed.

Clause 19: Section 79 amended —

Mrs M.H. ROBERTS: This clause states, in part —

> … before "impound" insert:
>
> seize and

so it will read "seize and impound". Why does the word "seize" need to be included here, minister?

Mrs L.M. HARVEY: It is more of a drafting correction. Obviously, a vehicle needs to be seized before it can be impounded, so it is basically clarifying that.

Clause put and passed.

Clause 20: Section 79A amended —

Mrs M.H. ROBERTS: This is a very similar amendment, so I am anticipating a similar explanation. We need to include the word "seize" so it will be "seize and impound". The minister said in her explanation that police officers are required to take physical possession of a vehicle. I assume the minister means a police officer or an agent is required to take that physical possession.

Mrs L.M. HARVEY: This is exactly the same as clause 19 but for a different section. It basically inserts the word "seize" prior to "impound". Police officers are the ones who seize and impound vehicles. Contractors convey the vehicle from where it is impounded to a yard for storage.

Clause put and passed.

Clause 21: Section 79BA amended —

Mrs M.H. ROBERTS: This deals with the issuing of a surrender notice to a vehicle's driver or responsible person requiring the surrender of the vehicle that is reasonably suspected of being used in the commission of an impounding offence. The explanatory memorandum states —

> Pursuant to subsection (5)(b), this notice must include a statement as to the effect of section 79BB(5), which makes it an offence for a person to dispose of their interest in the vehicle after they have received a surrender notice.
>
> This clause amends the current subsection 5 to require a statement as to the effects of section 79BB(5) and (6) as a consequence of an amendment made to the offence provision at clause 22 of this Bill.

I note that the impounding offence that someone might be reasonably suspected of might be an impounding offence, driving, or an impounding offence, driver's licence. Can the minister just clarify this? Are we talking about a person who has maybe lost their driver's licence or, if a person is to lose their driver's licence, at what point in time they would lose their driver's licence?

Mrs L.M. HARVEY: In effect, offenders will be issued with a surrender notice for a vehicle when they are charged with an offence that has an impounding consequence. This amendment creates an offence for those individuals if they vandalise, devalue or sell the vehicle prior to the exercising of the surrender notice. They have been charged with an impounding offence and they have been told their vehicle needs to be surrendered. If they sell it, vandalise it or devalue it, it is now an offence under this legislation.

Mr R.F. JOHNSON: I was under the impression that it was an offence under the existing legislation to do all of those things that the minister has just listed. If that is the case, as I believe it is, this is nothing new. Can the minister confirm that it is, under existing legislation, an offence to devalue, damage, sell or dispose of a vehicle that is, if you like, part of an order of confiscation and impoundment?

Mrs L.M. HARVEY: There was always an offence for a person disposing of a vehicle, but we have expanded this provision to also cover a devaluation of the vehicle. The example I have been given is that some of these offenders have actually removed the motor of the vehicle prior to surrendering it to police, which significantly devalues the vehicle and obviously still leaves them with something of value, which circumvents the consequences. We have now created an offence for an individual who might engage in that kind of behaviour.

Mr R.F. JOHNSON: Is the minister saying that that is not already in the legislation? I seem to recall that being part of the legislation when I was Minister for Police. It was not just disposing of the vehicle; it was devaluing

the vehicle, which could be done in all sorts of ways—damage to the vehicle, nicking all the good stuff out of it, or taking all the seats out of it or, as the minister said, the engine. That would devalue it enormously, and I was certainly under the impression that that was part of the existing legislation. If the minister is saying it is not, then fine, I will accept that, but I would be very surprised if that were the case. Can the minister tell us if that is true?

Mrs L.M. HARVEY: I am advised that, while this provision already existed in the legislation, we have clarified it. The difficulty that the police have is that it was not really clear in the previous legislation. With this amendment, we have sought to make abundantly clear the circumstances in which a person can incur a penalty for engaging in that behaviour. Although this offence did already exist, we have tightened it up and made it more workable for police to use.

Mrs M.H. ROBERTS: This provides that if a person who is given a surrender notice in relation to a vehicle commits an offence, or fails to comply with the notice, and does anything or permits another person to do anything that results in devaluation, et cetera, is subject to a fine of 50 penalty units. Is that a new provision, or is that the number of penalty units that currently applies?

Mrs L.M. HARVEY: No; it is the existing penalty.

Mrs M.H. ROBERTS: Obviously vehicles can be devalued in certain ways. Earlier, we discussed 50 penalty units. Each penalty unit is $50, so that is $2 500. On a high-value car it certainly may be possible to remove things from it that are worth well over $2 500. Although this would seem to be a stiff penalty for a low-value car, it seems that it may not be much of a deterrent for the owner of a high-value car. In the case of a very high-value car, components of it would be worth a lot more than $2 500. I wonder why it is not 50 penalty units or the amount that the vehicle has been devalued by.

Mrs L.M. HARVEY: That may be the case; however, this provision has not necessarily been changed. We have clarified it so that it is easier for police to prosecute people who do this. I am advised that drivers of lower value vehicles tend to display this kind of behaviour. Generally people with high-value vehicles are unwilling to devalue them. The member is right—for the driver of a Lamborghini, for example, a $2 500 fine will not necessarily deter them if they are looking at the permanent confiscation of that very high value-vehicle.

Clause put and passed.

Clause 22: Section 79BB amended —

Mrs M.H. ROBERTS: Can the minister clarify whether what is proposed will have very little real effect on the offences or the penalties?

Mrs L.M. HARVEY: Member, this reflects the previous amendment.

Clause put and passed.

Clause 23: Section 79BCA amended —

Mrs M.H. ROBERTS: This clause concerns the issue of a surrender substitute vehicle notice to a driver who has been charged with an impounding offence. Can the minister advise the house in what circumstances a substitute vehicle would be surrendered and how this scenario works?

Mrs L.M. HARVEY: Generally, a substitute vehicle will be surrendered if the driver who has been charged with the offence was driving someone else's vehicle; for instance, a work vehicle or a relative's vehicle or whatever it might be. In order to ensure that they can release their boss's vehicle or their employer's vehicle, if they own a vehicle, they can surrender it. The provisions around the devaluation of the vehicle they surrender will still apply; that is, devaluing it, damaging it or trying to dispose of it. Clause 23 brings some consistency into that.

Mrs M.H. ROBERTS: The minister gave the example of a person who is driving a work vehicle, and they want to be able to give that vehicle back to the employer, or the employer wants, no doubt, to get that vehicle back. I understand why this provision exists. However, I am seeking some clarity about what vehicle could be substituted. For example, Mr Smith works for employer A, and he commits a hooning offence in employer A's vehicle. Employer A wants their car back, and because Mr Smith is generally driving the employer's vehicle, he does not own a vehicle; therefore, he does not have a substitute vehicle in his name. Can that person go out that day or the next day and purchase a cheap vehicle and surrender or substitute that vehicle? Can a person who owns two or three vehicles choose which vehicle they will surrender? If a person has no vehicle to surrender, can they pay a financial penalty instead of surrendering a vehicle?

Mr R.F. JOHNSON: Madam Deputy Speaker —

The DEPUTY SPEAKER: Member for Hillarys, do you have a point of order or do you want to ask a further question? I think the minister is going to respond to the member for Midland.

Mr R.F. JOHNSON: I did not know that.

Mrs L.M. Harvey: I am seeking advice.

The DEPUTY SPEAKER: Thank you. I will call you when the minister has responded.

Mrs L.M. HARVEY: I am advised that if the individual has a work vehicle and they want to purchase a vehicle to surrender as an alternative, that vehicle must be of similar value. A person cannot just buy an old bomb and say that is their vehicle and surrender that. It must be a vehicle of similar value. A person cannot circumvent the system.

Mr R.F. JOHNSON: The minister mentioned a Lamborghini. There was a very famous case of a Lamborghini —

Mr J.M. Francis: I can't believe you're asking about that!

Mr R.F. JOHNSON: Why?

Mr J.M. Francis: Come on! When you were the minister, you brought this legislation in. I raised this with you. I don't normally make contact with you, but I raised this with you on numerous occasions, and you had to bring an amendment bill back to this house to fix it.

The DEPUTY SPEAKER: Order, member!

Mr R.F. JOHNSON: We will correct history, then.

The DEPUTY SPEAKER: Member for Hillarys, ask the question, please, through the Chair.

Mr R.F. JOHNSON: I was, until I was rudely interrupted by the member.

The DEPUTY SPEAKER: I have told the member who is interrupting you to stop. Will you please direct your question.

Mr R.F. JOHNSON: I certainly will, Madam Deputy Speaker. I was reflecting on the time when an offence of hooning took place in a Lamborghini that did not belong to the person who was driving it. A mechanic was driving that vehicle, and that vehicle was impounded by the police for 30 days. There was a big hoo-ha about that because the owner of the Lamborghini, who was a doctor of some note—or he has become fairly famous—thought that was very unfair. I thought it was unfair, and that is why I changed the legislation.

The DEPUTY SPEAKER: What is your question, please, member for Hillarys?

Mr R.F. JOHNSON: I am getting to it, Madam Deputy Speaker. Am I not allowed to lead into the question? The minister has already mentioned the Lamborghini. We are talking about vehicles that are impounded but do not belong to the person who has committed the offence. That is what I am saying.

The DEPUTY SPEAKER: Thank you. The minister.

Mr R.F. JOHNSON: I have not finished.

The DEPUTY SPEAKER: Sorry; I thought you had.

Mrs L.M. Harvey: I have not heard a question yet.

Mr R.F. JOHNSON: It is coming. I am giving the minister a precis of the question so that she can understand it. I want to say that at that stage, the legislation was changed. What will happen now if we have a similar situation and a mechanic is driving a customer's vehicle? Under the existing legislation, as I understand it, there is the option for a vehicle that belongs to the mechanic to be substituted for the customer's vehicle. However, the mechanic may not own a vehicle. What will be the situation if the offender who was driving the vehicle does not own a vehicle—or, if they do, it is an old bomb?

Mrs L.M. HARVEY: In the case of the infamous yellow Lamborghini in which the mechanic had no authority or ownership over the vehicle—they provided a service to the owner of the vehicle—should that mechanic not own any vehicle, basically, police would do an investigation to ascertain whether that was correct. I am advised that a senior officer—for example, an inspector—could still authorise the release of the Lamborghini. Regarding the individual having to go out and purchase a car of equal value to a Lamborghini, no, that would not apply in this case. The substitution of a vehicle would apply only if the service provider—the mechanic who was hooning—had a vehicle; then he would be required to surrender it in exchange for the Lamborghini. If he did not own a vehicle, he would be subject to the penalty that would arise out of the offence and the Lamborghini could still be released to the owner because the mechanic had no authority to drive the vehicle in that manner and he did not own it.

Mrs M.H. ROBERTS: The minister said that if a person did not own a vehicle, they would have to purchase a vehicle of equivalent value to the work vehicle in question and surrender it. My question is: let us say that the

work vehicle was worth $20 000, but if the person owned a personal vehicle that was worth only $1 500, would it be acceptable for them to surrender their $1 500 vehicle?

[Quorum formed.]

Mrs L.M. HARVEY: In response to the member for Midland's question, if, for example, an employer had a later series LandCruiser and that was the work vehicle that the hoon drove, police would look to the individual who incurred the offence. Police would take the vehicle of the highest value that the individual owned or the vehicle of equivalent value to the LandCruiser. I have also been advised that, prior to the release of the employer's vehicle, police will currently compel an offender who has been charged with the offence to pay for the impound costs to that point before they surrender another vehicle in exchange. If the individual owned only a vehicle of very low value—a $1 500 vehicle—under the act, we would have to accept that; however, we would recover the impound costs to the point prior to its surrender. If the individual had a $70 000 or $100 000 vehicle that was of equivalent value to the work vehicle, we would take the highest value vehicle that the individual owned as a surrendered vehicle.

Clause put and passed.

Clause 24: Section 79BCB amended —

Mrs M.H. ROBERTS: This clause amends section 79BCB. There are some minor drafting amendments that we are told will have basically no substantial effect. However, there is a claim that a person commits an offence by disposing of an interest in a vehicle after receiving a surrender substitute vehicle notice. The explanatory memorandum advises that no offence is committed if the person fails to comply with a notice or, having received a notice, does something or allows another person to do something to the vehicle that results or will result in a reduction in the value of the vehicle. The minister can correct me if I am wrong, but I suppose we are talking about someone's spouse, child, father or someone else removing things from the vehicle, potentially independently of the person or potentially in cahoots with the person involved. It appears that that person would not be committing an offence. Let us say that there was a very expensive stereo system or some other things of value in the vehicle and a relative or friend of the person removed those things from the vehicle. Can the minister clarify that, as the law stands, no penalty would be imposed on that person? Can the minister clarify in addition whether the person who is subject to the order would be committing an offence by allowing someone to do that to the vehicle? There is also a claim in the explanatory memorandum that actions of this nature have resulted in a cost to the state. Can the minister advise what the cost to the state has been?

Mrs L.M. HARVEY: I am advised that we do not keep figures on the cost of the devaluation of these vehicles that has occurred. The person who has been charged with the hoon offence is responsible for ensuring that the surrendered vehicle is surrendered in the state it was in when the offence was committed and that it has not been devalued or disposed of between committing the offence and surrendering the vehicle.

Mrs M.H. ROBERTS: I am not sure that that answers all the components of the question, but I gather that, by not saying anything, the minister is agreeing that if a relative removed things of value from a vehicle, no penalty would be imposed on that relative under the existing legislation or the bill before the house.

Mrs L.M. Harvey: This does not apply to personal effects in the car; it applies only to actual components of the vehicle. It would have to be the removal of the motor, for example, or devaluing the vehicle in that way.

Mrs M.H. ROBERTS: I mentioned by way of example the car's stereo system or speakers or things of that nature. Although they are not necessary to make the vehicle driveable, they are certainly part of the vehicle when it comes out of the showroom.

Mrs L.M. HARVEY: If the sound system or a GPS system that was built into the vehicle was removed, or the person permitted a relative to do so, yes, that would be considered to be an offence under this legislation.

Mrs M.H. ROBERTS: Would the offence be against the person who committed the hooning offence and not the relative?

Mrs L.M. Harvey: Yes.

Mrs M.H. ROBERTS: By way of further clarification, if something is retrofitted to a vehicle, let us say a GPS as the minister mentioned, it can be removed. A lot of new vehicles come with GPSs these days, but a lot of people use retrofitted GPSs, TomToms and the like, that are simply clipped onto the dash or other parts of the car. I understand from the minister's answer that those kinds of retrofitted things, such as a phone cradle or other objects of that nature, can still be removed under this legislation.

Mrs L.M. HARVEY: I am advised that anything that is connected to the vehicle by a wire, for example, would be considered part of the vehicle. If there were after-market modifications to the motor, for instance, at the time

of the impounding offence, they would need to remain intact on the vehicle when it was surrendered, or else the person could be charged with this offence and receive a penalty. A phone cradle, for example, could probably be removed, but a GPS that is set and wired into the vehicle would have to remain with the vehicle, or the offender could be charged with the offence of devaluing the vehicle.

Mrs M.H. ROBERTS: I think using the words "by a wire" is probably quite misleading because these days some things are connected by wire and equivalent things can be connected wirelessly. That would apply to phone cradle systems, hands-free phone systems and GPS systems. Older technology sees these things hard-wired. Newer technology sees them being wireless. I am not confident that the minister has given a good answer about that. I fully understand that things such as seat covers can be removed if someone has expensive sheepskin covers or something of that nature, but I am questioning some of the technology that people might have in their vehicles.

I think the minister has clarified that the penalty for the offence—a fine of up to 50 penalty units, which equates to $2 500—is applicable only to the person who is the subject of the hooning offence. I note, however, that the fine is up to 50 penalty units, so I am again assuming that this will need to go to court. Otherwise, I do not know why it says "up to". If it is their first offence, would they potentially get a lesser fine? Maybe it would not be 50 penalty units. Why is there that explanation of "up to 50 penalty units"?

Mrs L.M. HARVEY: The court would determine the penalty for this offence. The penalty is up to 50 penalty units and it would depend on the nature of the devaluation. The advice I have been given is that anything that is plug-and-go could be removed and that would not constitute devaluing the vehicle, but anything that is wired in would be considered to be connected to the vehicle. For example, people often have a dash cam plugged into the cigarette lighter or other outlets and that could be removed and it would not be considered a devaluation of the vehicle for the purposes of this offence. However, the removal of something that is wired in could damage the vehicle—for example, the phone cradle in my vehicle is wired in—and would be considered subject to this offence.

Clause put and passed.

Clause 25 put and passed.

Clause 26: Section 79BCD amended —

Mrs M.H. ROBERTS: Clause 26 deals with the section that relates to the surrender of an alternative vehicle. I am not sure why it is proposed to change the heading of section 79BCD from "Notice to surrender alternative vehicle for impoundment, issue of etc." to "Surrender alternative vehicle notice". Why has the heading been changed? Is it a new provision, so the notice needs to include a statement to the effect of section 79BCE(5); and, if so, why has it been inserted?

Mrs L.M. HARVEY: I am advised that the title of this section was changed for consistency in drafting and that it just gives rise to this section of the act referring appropriately to the other amended sections.

Mrs M.H. ROBERTS: I am waiting for an answer to the second question I asked with respect to the requirement to include a statement as to the effect of section 79BCE(5). Is that a new provision or an update to an existing provision, and why has that change been made?

Mrs L.M. HARVEY: The statement existed previously. It refers to the subsequent sections that we are amending. The next clause amends section 79BCE, and basically gives rise for the surrender alternative vehicle notice to take into consideration the future amendments that we will discuss shortly in the next clause.

Clause put and passed.

Clause 27: Section 79BCE amended —

Mrs M.H. ROBERTS: Again, we see this change of heading, which appears to serve little purpose. It is proposed that the current heading, "Surrender alternative vehicle notice, consequences of", be changed to "Consequences of surrender alternative vehicle notice". It seems to me to be very much a matter of semantics which way that is worded. I note some other wording changes. Section 79BCE(1) and (2) both state, in part —

> … the alternative vehicle specified in the notice according to the notice, the vehicle

We are substituting the words "is impounded by operation of this subsection" after those words with "must be impounded". I am not sure why these changes have been made. Perhaps the minister can clarify why that is the case. I see that proposed subsections (5) and (6) appear to be new provisions, although an old subsection (5) is replaced. Why does the current subsection (5) need to be deleted?

Mrs L.M. HARVEY: We are basically inserting an offence for a person failing to comply with a notice to surrender an alternative vehicle. Basically, a person could have been given a surrender alternative vehicle notice

but if they did not comply with that, there was no penalty. We have inserted a penalty for consistency to ensure that there is a consequence for people who do that.

Mrs M.H. ROBERTS: Am I correct in saying that although the penalty has been inserted, the penalty is only a penalty of up to 50 penalty units; that is, if somebody fails to comply with the order to provide the alternative vehicle, the maximum penalty they will get is a $2 500 fine? If that is the case, why would anyone surrender a $10 000, $20 000 or $50 000 vehicle if the penalty for not providing the vehicle is only a maximum fine of $2 500?

Mrs L.M. HARVEY: I understand that this allows them to be charged with an offence; however, if there is a notice given to surrender a vehicle, they cannot dispose of it, they cannot devalue it and they cannot license it, so basically they cannot effectively do anything with that vehicle except surrender it. That is the consequence. They still have to comply and if they do not, there are restrictions detailed in legislation on what they can do with the vehicle should they not surrender it.

Mrs M.H. ROBERTS: If a person does not surrender the vehicle and they, for example, continue to drive it, will there be other penalties that accrue to them?

Mrs L.M. HARVEY: There could be, because I am advised that a vehicle subject to a surrender notice is legally considered to be an unregistered vehicle, so should they drive it, it would be impounded.

Mrs M.H. ROBERTS: Flowing on from that, would they be charged with driving an unlicensed vehicle?

Mrs L.M. HARVEY: They would definitely be charged with driving an unlicensed vehicle and no doubt other offences if the person was of that calibre.

Clause put and passed.

Clause 28: Section 79C amended —

Mrs M.H. ROBERTS: Clause 28 amends section 79C, "Senior officer to be informed etc. if vehicle impounded". The advice in the explanatory memorandum is that a senior officer needs to be informed of the grounds on which a vehicle has been impounded so it can be ensured that there is sufficient evidence for it to be impounded. I understand that that is currently the provision, so I wonder why this section needs to be amended.

Mrs L.M. HARVEY: All this does is amend the legislation to reflect that an officer needs to seize a vehicle before they impound it. All that is being inserted is "seizes and" prior to "impounds". Further, "the date of the seizure and impounding" replaces "the impounding". It is just for consistency.

Mrs M.H. ROBERTS: Under section 79C, a police officer has to inform a senior officer of the grounds on which the vehicle has been taken. Assuming the police officer does that, the senior officer then reviews the grounds in order to ensure that there is sufficient evidence. What happens if the senior officer does not believe there is sufficient evidence? What process occurs? Is there any redress available to the person who has had their car seized?

Mrs L.M. HARVEY: If there were no grounds to impound in the first place, the senior officer would return the vehicle to its owner as quickly as possible. The owner of the vehicle would not be liable for any costs associated with impounding the vehicle. No provision exists for any claims or compensation; however, it is always open to any member of the community—for instance, if the vehicle had been wrongfully seized and had been impounded for a period of time and that had had an impact on that person's ability to conduct their affairs—to make an application to the commissioner for an ex gratia payment.

Mrs M.H. ROBERTS: A number of costs could be incurred by someone whose vehicle is seized and impounded. They will need to get home or back to work from wherever their vehicle is and they may need a taxi, which might cost $40 or $50; indeed, the person whose car has been seized could well be a taxidriver, a courier or some other person who uses a vehicle in the course of their living. They may have loss of earnings. If I put enough time into it, I could probably come up with a whole range of scenarios. Is the minister saying there is no automatic provision for them to claim their reasonable expenses; for example, a taxi fare home or loss of income for a certain number of days, if they were able to demonstrate how much income they generally earned per day using their vehicle? I gather from the minister's answer that no provision exists for them to be reimbursed and they would have to write to the Commissioner of Police to seek an ex gratia payment. Could the minister clarify for the record whether the Commissioner of Police is the correct person to write to to seek redress, or is it the minister, the Premier or someone else if they wanted to seek redress? While I am on the topic, could the minister advise whether any cars—I will not say wrongfully seized—have been seized with insufficient evidence and returned to people? On how many occasions has that occurred, if any; and have there been claims for compensation; and, if so, how many and for what amounts?

Mrs L.M. HARVEY: I am advised it is a rare occurrence and police do not collect the statistics on the number of impounded vehicles that are returned because they were deemed to be impounded inappropriately. I am

advised that the reviews of the impound notice happen in a very short time frame. Generally, advice is given on the spot to the officer through the operations centre or some other mechanism on whether the vehicle should be seized, and usually the decision to return the vehicle is made within hours of the vehicle being impounded. In the rare event that a vehicle might be impounded for a longer period of time, the correct person to write to and make a claim, should that impoundment be unlawful and if the owner of the vehicle incurred costs, will be the Commissioner of Police. Individuals write to me about these things from time to time but, as minister, I would refer that directly to the Commissioner of Police to deal with.

Clause put and passed.

Clause 29 put and passed.

Clause 30: Section 80A replaced —

Mrs M.H. ROBERTS: This clause inserts a new section 80A. Previously section 80A was very short and was headed "Impounding offence (driving) by previous offender, court may confiscate vehicle used in". That heading will be changed to "Confiscation of vehicles used in certain impounding offences (driving)". I gather that this is one of the key clauses that will capture people who commit offences in school zones. I note that proposed section 80A(2) states —

> (2) A court may make an order if it is satisfied that —
>
> (a) the offence was committed in a school zone; or
>
> (b) the offence was committed in a confiscation zone other than a school zone and the commission of the offence resulted in, or was likely to result in —
>
> (i) members of the public experiencing harassment, intimidation, fear or alarm; or
>
> (ii) damage to any property …

Then it states —

> or
>
> (c) the commission of the offence involved the driving of the vehicle at 90 km/h or more above the speed limit.

That is why I raised the point about the 155 kays during debate on an earlier clause. The proposed new section goes on to state —

> (3) The court may make the order if it is satisfied that —
>
> (a) the offence was committed in a confiscation zone; and
>
> (b) in the 5 years before the day …

One of my main questions here is, at proposed subsection 2(a) it states the court "may" make an order. Why is it "may" make an order and not "will" make an order, because it seems that discretion will be involved? Again it states "the offence was committed in a school zone". Earlier this afternoon we talked about how school zones are not operative all the time. Again, I ask why it would not say an "active school zone"? I note that when the second reading speech refers to "school zone" it is described as an "active school zone".

Mrs L.M. HARVEY: We went through the definition of "school zone" earlier. We have not referred to it as an "active school zone" because "school zone" is defined as a zone which is signposted and in which the speed limit is dropped during certain hours. With respect to the court "may" make an order, this is not a mandatory confiscation provision. The commitment that we made was that police could make an application to the court to allow for permanent confiscation of a vehicle on a first offence if the vehicle was driven in a way that we have prescribed in the legislation as exceeding the speed limit by 90 kilometres an hour or more, causing fear and harassment et cetera. We always said it would be an application to the court and the court would determine whether we could permanently confiscate the vehicle on the first offence. It was never intended to be a mandated confiscation.

Mrs M.H. ROBERTS: Is the minister advising me that proposed section 80A applies only to first offences and not subsequent offences?

Mrs L.M. HARVEY: No, member; the whole of proposed section 80A(3) refers to a secondary offence and whether there were two previous impounding offences under proposed section 80A(4).

Mrs M.H. ROBERTS: I note that the use of the word "may" rather than "will" is used in just about every clause here. In the first instance I referred to 80A(2) —

> A court may make an order if it is satisfied that —

I will not bother reading it out again. Subclause (3) states —

> The court may make the order if it is satisfied that -—

Subclause (4), which I think is the clause the minister just referred to, states —

> The court may make the order if it is satisfied that in the five years before the day on which the offence was committed the person was convicted of 2 previous impounding offences (driving).

I suggest, minister, that this is not just about first offences and giving the court discretion not to impound on a first offence but, in light of subclause (4), it continues a discretion for the court for a third offence. Why, if it is a third offence, should it not be mandatory? Why is it optional?

Mrs L.M. HARVEY: I am advised that this proposed section needs to be read in conjunction with clause 34, which, basically, covers hardship provisions in which, for a third offence, the court must impound a vehicle unless there are circumstances of extreme hardship referred to in further clauses.

Mrs M.H. ROBERTS: Why does the clause not provide that the court "will" impound subject to the provisions of clause 34 if it is not completely optional? Why does it not say "will impound" and still have the words subject to the provisions of clause 34?

Mrs L.M. HARVEY: I am advised that is a drafting convention, generally, to provide that the court "may" make an order unless there is a mandatory component to it.

Mrs M.H. ROBERTS: I think the minister is misleading when she says in the media that things will happen— that cars will be impounded if someone commits three offences. She has said in the media that a car will be impounded; she did not say it may be. Under the legislation it is just "may be". Perhaps the minister should be a little more temperate in the claims she makes in the media and in various statements she makes in this house about what she is implementing. She likes to talk tough but I am not sure the legislation is as tough as she has been making out because these provisions state that the "court may"; it is not even "the court will subject to", as a little out. It is just that it may do certain things. I think it frustrates members of the community when they hear politicians say one thing and they see the courts adjudicate in a different way and the offender gets a different result. The tendency then is to blame the courts. If the court does not make an order under section 80A(4), it will be because that is what was provided for in the legislation that the minister brought before the house. I do not think she can have it both ways. This does not mean that somebody who has committed three hooning offences will necessarily have their car confiscated. I suppose when we get to clause 34 we will have a look at those hardship provisions and how they will operate, but this really only gives a court an option rather than places a requirement to impound.

[Quorum formed.]

Mrs M.H. ROBERTS: How can the minister claim that hoons will have their cars confiscated after three offences, when her own legislation states only that they may?

Mrs L.M. HARVEY: This legislation states exactly what I said it would do in my election commitment. All the material stated that offenders would be subject to permanent confiscation of their vehicles on a first offence by application to the court. I have not misled anyone.

Mr R.F. JOHNSON: I want to take up the issue that the member for Midland has brought forward. Proposed new section 80A(4) states —

> The court may make the order if it is satisfied that in the 5 years before the day on which the offence was committed the person was convicted of 2 previous impounding offences (driving).

The member for Midland is quite right, that states the court may make the order, not shall or will or anything like that. To me, that has just left it as open slather about whether the court will want to do that, and some of us do not always have a lot of confidence in the courts. Existing section 80A(2) states —

> A court is not to make an order under subsection (1) unless it is satisfied that in the 5 years before the day on which the offence was committed the person was convicted of 2 previous impounding offences (driving).

Under the existing legislation, the inference is that if the court can be satisfied that there have been two previous convictions for those impounding offences, it must confiscate the vehicle. In clause 30 of the bill, under proposed section 80A(4), the court "may" make an order. Surely, if we are going to get tough on these people, it should be "shall" or "will". That would send a message to the courts quite clearly that this legislation is meant to confiscate those vehicles on a third offence. I thought we were not going to pussyfoot around leaving it up to the courts to decide whether to confiscate a vehicle. I thought it was going to be quite clear. The minister has said publicly that anybody who commits a third hooning offence will lose their vehicle. This bill does not say that.

This bill before the Parliament simply says the court "may". I suggest the minister might want to change that to a "shall" or a "will" to make it a bit stronger.

Mrs L.M. HARVEY: The member is making the mistake of not considering all of this legislation in context. I refer the member to page 114 of the marked-up bill. The member said he had a copy of that. Proposed section 80G(6A) outlines the requirements when the court is required to make an order.

Mr R.F. Johnson: That "may" be made.

Mrs L.M. HARVEY: There are provisions in the legislation for impoundment on a third offence but they are not considered as part of this amending clause. This amending clause is in response to the new offence we have created.

Mrs M.H. ROBERTS: It is typical of the minister to make assertions that the member for Hillarys has not considered it all in context and whatever. The moment she went to read out the paragraph of the marked-up bill on page 144 that states "the court is required to make an order", she wanted to emphasise the word "required". She did not look at the words underneath that. Although it says the court is required to make an order, it goes on to say —

> … that may be made under section 80A(3) or (4) unless it is satisfied that the order would cause severe financial or physical hardship to a person, other than the driver of the vehicle, who has an interest in the vehicle or is the usual driver of the vehicle.

In essence, the minister has merely drawn the house's attention to the fact that the member for Hillarys was quite correct. She latched upon the word "required". She read out the first line but did not read out the word "may" immediately under that before she got to her feet and tried to make a point against the member for Hillarys.

Clause put and passed.

Clauses 31 to 33 put and passed.

Clause 34: Section 80G amended —

Mrs M.H. ROBERTS: The minister referred to this clause a moment ago. She said that some matters could be taken into consideration. I ask the minister to outline what those matters are.

Mrs L.M. HARVEY: I am not really clear what the member is asking.

Mrs M.H. ROBERTS: The minister can correct me if clause 34 was not the clause that she referred to, but she said there were hardship provisions that could be taken into consideration. I believe the minister made a reference to clause 34. If it was another clause, please let me know what clause that was.

Mrs L.M. HARVEY: No, member, it is clause 34, which amends section 80G. Hardship provisions are outlined on page 114 and it covers severe financial hardship, physical hardship to a person who has an interest in the vehicle et cetera, which are the options that the court may take into consideration should it deem that it would be manifestly unfair and cause severe hardship if the vehicle was impounded.

Mrs M.H. ROBERTS: Can the minister advise whether the changes that she is making in this bill to section 80G are just superficial changes to the wording or whether they change the substance of section 80G; and, if they do change the substance of section 80G, can the minister advise how section 80G is changed in any substantial way?

Mrs L.M. HARVEY: As I understand it, the changes in this amendment are to streamline processes for the police. When a person is convicted and found guilty of an impounding offence, the court may make a decision to impound the vehicle, taking into consideration hardship provisions et cetera; or, should the court determine that the vehicle should not be impounded as a consequence, there is an opportunity for the police to apply for that to occur. This will give the court the option to impound the vehicle, where previously the police had to make an application to the court in order for that impounding to occur.

Mrs M.H. ROBERTS: Can the minister clarify that this is dealing with instances in which a vehicle has not already been seized and impounded and it is as a result of a court process?

Mrs L.M. HARVEY: That is correct.

Clause put and passed.

Clause 35: Section 80H amended —

Mrs M.H. ROBERTS*:* Minister, is this just a minor drafting amendment or is there a change of substance here?

Mrs L.M. HARVEY: This is just a minor drafting amendment, once again, to change the wording of the title. It is consequential to the insertion of the definition of "reasonable expenses" in section 78A by clause 13 of the bill, and also the definition contained in section 78A applied to the terms used in division 4. It is just to make this section reflect currency with the amendments that we have already discussed.

Clause put and passed.

Clause 36 put and passed.

Clause 37: Section 80IB amended —

Mrs M.H. ROBERTS: We are told that the amendment to section 80IB(5)(b) has been recommended to address an anomaly through which an offender can avoid paying the storage costs for the impounded vehicle. What is that anomaly and in how many circumstances has a court not been able to hear a matter within 12 months? Has the number of cases that have not been heard by a court in 12 months been increasing or decreasing?

Mrs L.M. HARVEY: As I have said previously with respect to this issue, it addresses an anomaly that has been found as we were looking at the legislation. I am not advised that this has actually ever occurred. What we are removing is the opportunity or the potential for it to occur. I will stand corrected if I am advised subsequent to this that there has been such a circumstance. However, my understanding and what I was advised when this was being drafted was that this anomaly has been found. We believe it needs to be corrected to ensure that the Commissioner of Police would not have to refund all the impounding costs and expenses incurred just because there has been a delay in a court process. We will now do that only, should this bill go through, in response to the offender being acquitted of the charges.

Mrs M.H. ROBERTS: It puzzles me that the explanatory memorandum does not state what the minister has outlined. It does not state that either there have been no instances of this or that police are not aware of any instances. The explanatory memorandum reads as though there have been instances of it. It states —

> In some instances, matters outside the control of the Commissioner of Police result in a charge not being heard within the required 12 months and although the person is subsequently convicted of the impounding offence, the Commissioner has to refund the impoundment costs that were paid on release of the vehicle from the impounding yard.

The explanatory memorandum reads as though this has happened. It states that in some instances, matters outside the control of the Commissioner of Police result in a charge being laid and so forth, and not being heard within 12 months and, in those instances, a refund has to be given. Despite this being what we read in the explanatory memorandum, the minister now tells us that she is not aware of any instances, and her learned advisers are obviously not able to tell her of any instances when this has occurred. The minister is now saying that, effectively, a loophole, a drafting error or whatever, has been picked up and it is being tightened up so that these instances do not occur. If that is the case, why did the explanatory memorandum not just state that the amendment is to tighten up the legislation because there is a concern that some people might use this loophole in the legislation?

Mrs L.M. HARVEY: I thank the member. Certainly from my time as Minister for Police, I am not aware of any of these instances occurring. However, it was brought to our attention that this anomaly needed correcting. My adviser from the statistics and post–impound process section of police, Mr Scott, who deals with these said that in the four years he has been there, he is not aware of any refunds being given. That said, I am advised that it may have happened once or twice. It has not happened in the last four years but it is certainly not a scenario that I would like to happen on my watch. That is why I took the advice of police to close that anomaly with this amendment.

Clause put and passed.

Clause 38: Section 80I amended —

Mrs M.H. ROBERTS: I have just a quick question by way of clarification in the first instance. The explanatory memorandum includes section 80I amended and when I look at the marked-up act with the bill's amendments, I can see section 80IA on page 115 and on page 116 it goes to 80IB. It is on page 117; there are sections 80IA and 80IB and then it goes to section 80I. Section 80I deals with storage expenses and the Commissioner of Police's ability to refuse to release an impounded vehicle until the commissioner is paid the expenses incurred in storing the vehicle after the end of the impounding period. Minister, does that replace an existing provision or is this a new provision for the Commissioner of Police to be able to refuse to release a vehicle? Also, do court processes impact on this provision or not? If a court states that a vehicle has to be released, I assume that the vehicle would need to be released. Does this provision mean that even if a court orders that a vehicle be released, until the expenses are paid, it cannot be released?

Mrs L.M. HARVEY: It makes it very clear that the commissioner is able to claw back the costs of the impoundment period. Previously, the legislation was ambiguous on whether the commissioner had the authority to do that.

Mrs M.H. ROBERTS: In the amendment to the Road Traffic Act, there is a reference to "post-impoundment expenses". Would the minister be able to outline what post-impoundment expenses are?

Mrs L.M. HARVEY: Post-impoundment expenses are the disposal costs of the vehicle.

Mrs M.H. ROBERTS: The explanation is that section 80I empowers the Commissioner of Police to refuse to release an impounded vehicle until the expenses are paid. The minister has said in her answer that the post-impoundment expenses that the commissioner can require are the costs of disposing of the vehicle, but presumably this provision is about the return of the vehicle. How can the commissioner return a vehicle that he has disposed of?

Mrs L.M. HARVEY: There are two components to this. First of all, once the period of impoundment ends, there is a period of notification prior to when the commissioner can dispose of the vehicle, and costs are still being incurred for the impounded vehicle during that time. Should the vehicle then not be claimed and the commissioner disposes of the vehicle, there is the post-impoundment costs period, which is currently around 70 days. The cost for the storage of the vehicle currently rests with the Commissioner of Police because it is not clear that the commissioner can charge for those storage costs post the impoundment period prior to disposal. The legislation has not been clear to this point on whether the commissioner can claim for those disposal costs.

Clause put and passed.

Clause 39: Section 80JA amended —

Mrs M.H. ROBERTS: I note that under clause 39, the words "interest, in relation to a vehicle, means a legal or equitable interest, right or title in or to the ownership or possession of the vehicle" will be deleted. Why are those words being deleted from section 80JA(1)?

Mrs L.M. HARVEY: It is because the term "interest" has been defined in proposed section 78A. The term "interest", which means, in relation to a vehicle, a legal or equitable interest, right or title in or to the ownership or possession of the vehicle, has been defined in proposed section 78A through the amendment in clause 13. It is not required to be further defined under section 80JA.

Clause put and passed.

Clause 40: Section 80J amended —

Mrs M.H. ROBERTS: Clause 40 is a clause of some substance. I am advised that it will have significant benefit to WA Police. I note that some of the changes relate to a vehicle that is not collected within seven days rather than 28 days. I also note that there are some changes to when the commissioner can dispose of the vehicle. Can the minister advise the house what benefits will accrue to WA Police with the inclusion of the amendments in this clause?

Mrs L.M. HARVEY: This does two things. Under the existing process, once an impounding period is finished, there is a 28-day grace period in which the owner of the vehicle is given time to collect the vehicle. After 28 days the commissioner can take steps to dispose of the uncollected vehicle. Then there is a 14-day waiting period. We are reducing these periods. Clause 40(3) reduces the 28-day grace period following an impounding period to seven days, which reduces the entire process from 70 days to 49 days. Basically, the saving to WA Police is from reducing the 28 days for which it was previously incurring the storage costs of uncollected vehicles to 21 days.

Mrs M.H. ROBERTS: Can the minister advise what information is provided to those people who have their vehicles impounded about their responsibilities for collecting vehicles and what can happen to their uncollected vehicles and their disposal? Whilst the minister is explaining that, can the minister advise what changes the government will make in the future to the advice that is provided as a result of the passage of this legislation?

Mrs L.M. HARVEY: At present the process is that when a vehicle is impounded, the driver of the vehicle is given a copy of the impound notice, which details the impounding period. At that point, they know the date that the impounding of their vehicle ends, which is by definition the date on which they can make arrangements to collect the vehicle. Within the first seven days of the vehicle being impounded, an SMS and a letter are sent to the owner and driver of the vehicle to advise them of the date when the impounding period will end and they will be responsible for collecting their vehicle. On day 21 of the impounding period, an SMS is sent to advise that day 28 is coming and that the end of the impounding period is imminent. Seven days post the last day of the impounding period, a letter is sent advising the owner that the vehicle will be disposed of. Currently, we wait for 28 days after that advisory letter has been sent. Under the new process, we have not detailed our notification process, but I envisage that after seven days into the impounding period we would notify the owner and the

driver of the vehicle being impounded that the vehicle will be disposed of within a shorter time should they not collect the vehicle on the date that that vehicle is technically released from the impounding period.

Mrs M.H. ROBERTS: I also refer to proposed section 80J(4). The government is proposing to delete paragraph (b), which states —

> a notice of the intention to sell or dispose of the vehicle or item is published, at least 14 days before the proposed sale or disposal, in a newspaper having State-wide circulation; and

I assume there will no longer be a notice of intention to sell or dispose of a vehicle. I understand that the words "sell or dispose" are used because in some circumstances vehicles are not of sufficient value to warrant sending them to auction. That notice of intention to sell or dispose is currently required to be published in a newspaper that has statewide circulation at least 14 days before the proposed sale or disposal. Those words will be deleted. It seems that the government is now proposing to put in its place the following words —

> The Commissioner is not to sell or otherwise dispose of an uncollected vehicle or an item —

Perhaps the minister could explain what an item is. Are we talking about a motorbike or something else? It continues —

> unless —
>
> (a) each responsible person is given at least 14 days' written notice of the Commissioner's intention to sell or dispose of the vehicle or item; and
>
> …
>
> (c) in the case of an item, reasonable steps have been taken to return the item to its owner; and
>
> (d) any proceedings under subsection (5) or (6) in relation to the vehicle or item and any appeal in respect of those proceedings are determined.

How will this be constituted in a written notice? What if that person has gone overseas or interstate, for example? What if the person has moved house? What if the person has gone to jail? What if, for one reason or another—administrative error, potentially—the notice is sent to the wrong address?

Mrs L.M. HARVEY: Police use their information management system as a tool for what they say is the truth of information. The information contained in that system would then be transcribed on the impoundment notice. That is where the letter is sent. Generally, I am advised that at that point, if there is a different address in the system from the owner's current address, that is often when notification occurs so we can ensure that we get the right telephone number and address to advise the owner of the imminent disposal of their vehicle. In addition, obviously when the vehicle is impounded, the driver of the vehicle is also given details of when the vehicle needs to be picked up from impoundment. It is not as though this is news to the individual. Most individuals who have cars that they value are ready to pick up their vehicle at midnight on the day the impoundment period ends.

With respect to the advertisements in a newspaper, I am advised that when this legislation was drafted, there had not been one inquiry as a result of a newspaper "intention to dispose motor vehicle" ad. That is just a wasted expense for taxpayers. We do not believe they should incur that cost given that the ads do not generate any inquiries.

Mrs M.H. ROBERTS: Can the minister clarify whom the onus is on to get the address right and make sure that the person is notified? Is the onus on the Commissioner of Police? I might just outline some circumstances of my constituents having issues being notified of things. For example, parents have come to my office when there have been relevant notices sent to their adult children. In some circumstances, those adult children have been in jail. In other circumstances, they have been mentally incapacitated in some way—potentially locked in a ward of a mental institution and unable to respond to those legal notices. Is it in order for someone on their behalf—a parent, for example—to respond and somehow collect the vehicle if permission cannot be gained from the owner of the vehicle? There have been circumstances of parents opening letters containing speeding fines and wanting to pay them. They have tried to pay and have been told that they are one day too late to pay the amount and that they have to wait until subsequent charges are incurred. No-one wants to talk to them about it. Then there is a further bill and they are told that they have to go to the Fines Enforcement Registry or something and that only the owner of the vehicle can pay the fine. What provisions are there when somebody, for whatever reason, is not able to properly receive the notice due to imprisonment or some mental health incapacitation or the like?

[Quorum formed.]

Mrs L.M. HARVEY: I draw members' attention to the fact that in the circumstances the member for Midland described, new section 80M details an opportunity for compensation when the vehicle has been disposed of and the person has been found not guilty. In circumstances in which the owner of the vehicle has not been appropriately notified, there is an opportunity for the owner of the vehicle, once again, to write to the Commissioner of Police should they feel they have been unfairly dealt with. It does not happen often, because generally police go to great lengths to ensure that they have the details of the owner of the vehicle—the appropriate mobile phone contact et cetera—so they can contact the owner of the vehicle once the period of impoundment is finished. Police make every effort to contact owners. If owners contact police and advise them there is a problem paying impound costs or there is some other issue—for instance, they might be working fly in, fly out; they might be overseas; they might be ill or whatever the circumstances might be—police can make arrangements with the people concerned. That can occur if those people inform police that there is an impediment to them coming to collect the vehicle from impoundment. That can happen somewhat frequently in certain circumstances because often these individuals cannot necessarily come up with the payments to cover the impoundment costs. We work as closely as we can with them, obviously. We are not really interested in disposing of vehicles; it is not really our core business. It is certainly an action of last resort.

Clause put and passed.

Clauses 41 and 42 put and passed.

Clause 43: Section 80M inserted —

Mrs M.H. ROBERTS: This is a substantially new area dealing with motorcycles and so forth. It inserts proposed section 80M, "Compensation for certain vehicles or items disposed of under s. 80J", which sets out a range of definitions and also deals with some of the issues that the minister referred to about the state's liability to pay compensation to the former owner of an uncollected vehicle. I refer to proposed section 80M(6), which I acknowledge the minister has said is likely to be used rarely given the diligent way police attempt to deal with these matters. I am trying to ascertain whether proposed section 80N is part of this clause or a subsequent clause.

Mrs L.M. Harvey: It is part of clause 44.

Mrs M.H. ROBERTS: Proposed section 80N defines terms such as "immediate family", "surrender notice" and "suspected use".

Mrs L.M. Harvey: That is clause 44. Clause 43 deals only with proposed section 80M.

Mrs M.H. ROBERTS: I will wait for clause 44 for the rest.

Clause put and passed.

Clause 44: Part V Division 4 Subdivision 5 inserted —

Mrs M.H. ROBERTS: Proposed subdivision 5 will allow a police officer to impound an unlicensed motorcycle being used on a road. This is long overdue. Could the minister explain why we need a definition for "immediate family" and how does that relate to these new provisions?

Mrs L.M. HARVEY: "Immediate family" is defined in proposed section 80N because proposed section 80S, "Claims of right to possession", states —

> (1) A person may, within 10 days after the day on which a motor cycle is impounded under section 80O(2) or 80Q(1) or (2), give to the Commissioner a claim that —
>
> (a) the person —
>
> (i) is a responsible person for the motor cycle; and
>
> (ii) is not a member of the driver's immediate family; and
>
> (iii) was not the driver of the motor cycle at the time of the suspected use;

Trail bikes are not licensed or registered to an individual. For example, if a family with a couple of young people owns a number of trail bikes, which are unregistered vehicles, and they are ridden on a gazetted road, this clause will not absolve any of the immediate family members and allow them to, if you like, get the trail bike back. We are basically saying that the family who owns the trail bikes will be subject to forfeiture of the trail bike if any member of that family is caught riding that trail bike on a gazetted road or illegally. That is what this clause will clarify.

Mrs M.H. ROBERTS: Proposed section 80S explains that. It states —

> (1) A person may, within 10 days after the day on which a motor cycle is impounded under section 80O(2) or 80Q(1) or (2), give to the Commissioner a claim that —

(a) the person —

(i) is a responsible person for the motor cycle; and

(ii) is not a member of the driver's immediate family; and

(iii) was not the driver of the motor cycle at the time of the suspected use;

I take it that means that if a boy grabs his brother's bike and uses it for an offence, the brother does not get the bike back?

Mrs L.M. Harvey: That is correct.

Clause put and passed.

Clause 45 put and passed.

Clause 46: Section 109 inserted —

Mrs M.H. ROBERTS: This clause inserts new section 109. Can the minister advise the chamber what are the key elements of this insertion?

Mrs L.M. HARVEY: These are transitional provisions from the old act to have currency with the amending legislation.

Mrs M.H. ROBERTS: There is no doubt that when this legislation is proclaimed, there will be some impoundments already in process. For the ones that are in process, will they proceed fully under the existing law and only new cases will be subject to the current provisions? For example, especially with respect to the sale provisions, the commissioner will now be able to dispose of a vehicle after a shorter period; will that apply only to vehicles seized after the date that this legislation becomes law?

Mrs L.M. HARVEY: These transitional arrangements allow us to deal with any impounded or seized vehicle in our possession under the new provisions of the amendment.

Mrs M.H. ROBERTS: I am not sure the minister answered my question fully. I asked the minister a question about this during the second reading debate. I think it was mentioned in the second reading speech that some 1 700 vehicles were currently impounded. Back in May I asked how many vehicles were currently impounded and how many of those vehicles would be disposed of once this legislation became law. They are matters I am still waiting for answers on. With respect to the transitional period, will the passage of this legislation allow for the commissioner or the state to proceed forthwith to sell some number of vehicles and dispose of them? If so, how many vehicles will that be?

Mrs L.M. HARVEY: I am advised that at present 1 329 vehicles are in police possession. If the act is proclaimed at midnight tonight, we will be able to dispose of them 14 days from then.

Mrs M.H. ROBERTS: On one level that is clearly a good thing. The minister explained the process that occurs when a vehicle is impounded now; that is, people get certain advice through text messages and so forth. Clearly, whenever this becomes law, those rules will change. One assumes that people whose cars are impounded will need to be provided with some updated advice. They may or may not be able to dispose of them all as swiftly as in 14 days because of that.

Mrs L.M. HARVEY: I am advised that arrangements are being made at present to advise owners of the new disposal arrangements, which could be in place to ensure that they understand they will need to make arrangements to collect their vehicle as close as they can to the last date of the impoundment.

Clause put and passed.

Heading: Part 3 — Consequential amendments to other Acts —

Mrs L.M. HARVEY: I move —

Page 41, line 1 — To insert after "**other Acts**" —

and repeals

Amendment put and passed.

Heading, as amended, put and passed.

Clauses 47 to 50 put and passed.

Clause 51: Section 12 amended —

Mrs M.H. ROBERTS: This clause allows for the balance of the proceeds from the sale of a confiscated motorcycle to be credited to the road trauma trust account, which is clearly a worthy thing to occur. I want the minister to clarify whether the proceeds from the sale of any of the other vehicles are also credited to the road trauma trust account; and, if not, why not?

Mrs L.M. HARVEY: The proceeds from the disposal of other vehicles will go first to realising any debt incurred against the vehicle. If anything is left over after that, it will go into the road trauma trust account.

Mrs M.H. ROBERTS: Is that currently the case or is it a new provision? If it is currently the case, how much money has accrued to the road trauma trust account as a result of the proceeds of vehicle sales?

Mrs L.M. HARVEY: Currently, the proceeds from the disposal of confiscated vehicles go to the road trauma trust account but not the proceeds from vehicles impounded under this legislation.

Mrs M.H. ROBERTS: How much money goes into the road trauma trust account annually as a result of those confiscated vehicle proceeds?

Mrs L.M. HARVEY: I do not have the actual figures, but it is not a lot. Generally, the vehicles that remain uncollected are of low value. Often the reason they are uncollected is that the debt against the vehicle exceeds the value of the vehicle, and the owner of the vehicle will often make the decision to leave the vehicle there, rather than take responsibility for it and the debt. We have brought this legislation forward to allow us to try to release the vehicles earlier and drive down the costs that taxpayers are currently bearing, and to try to provide some kind of incentive, if you like, for owners of these vehicles to collect them at an earlier point.

Mr D.A. TEMPLEMAN: Mr Acting Speaker, this matter has now been debated for quite some time, and the advisers in particular have not had the opportunity for a comfort break, if that was required. I am asking what the function of the house is to allow that to happen, if necessary.

The ACTING SPEAKER (Mr P. Abetz): My understanding is that they can request a break if they require one.

Mrs L.M. Harvey: We are all fine.

The ACTING SPEAKER: You are all fine? Good. Thank you for your interest in their wellbeing, member for Mandurah.

Mrs M.H. ROBERTS: The minister has advised that currently proceeds from the sale of confiscated vehicles go into the road trauma trust account. Like the minister, I understand that most of those confiscated vehicles that are not collected are of little or no value, and indeed what value we do get back for them is largely consumed, if not more than consumed, by the cost of impounding. I am asking a couple of questions. Firstly, is that determined on a case-by-case basis? I imagine that for every 100 cars in that circumstance that are worth very little, we have incurred a big cost. Is it done as a global amount of the proceeds or is it done on an individual car basis? The police might be owed $500 or $1 500 for some cars, or some amount of money in impounding and other costs, whereas the next car arguably might have a small amount of proceeds. Is that amount that accrues to the road trauma trust account determined on a case-by-case basis, or is it a global amount of proceeds over the course of a financial year or the like? That is one question.

Mrs L.M. Harvey: It is done on a case-by-case basis.

Mrs M.H. ROBERTS: The other matter is that it appears to me that any substantial amount goes into the road trauma trust account from this provision. I note that the minister has advised that she does not have to hand the figure for how much money goes in. I am wondering whether the minister can provide that amount to the house when we do the third reading of this bill.

Mrs L.M. Harvey: If I can obtain it, I will provide it.

Clause put and passed.

New Part 3 Division 2A —

Mrs L.M. HARVEY: I move —

Page 41, after line 26 — To insert —

Division 2A — *Road Traffic Legislation Amendment Act 2016* amended

51A. Act amended

This Division amends the *Road Traffic Legislation Amendment Act 2016*.

51B. Section 42 amended

(1) In section 42 in inserted section 49AAA insert in alphabetical order:

above the speed limit, in relation to the driving of a vehicle, means driving the vehicle at a speed that exceeds the speed limit applicable to the driver, the vehicle or the length of road where it is being driven;

confiscation zone means —

(a) in relation to a vehicle, a length of road where the speed limit applicable to the vehicle, or the length of road, is 50 km/h or less; or

(b) a school zone;

motor cycle means a motor vehicle that has 2 wheels and includes —

(a) a 2-wheeled motor vehicle with a sidecar attached to it that is supported by a third wheel; and

(b) a motor vehicle with 3 wheels that is ridden in the same way as a motor vehicle with 2 wheels;

school zone means a length of road designated as a school zone under a road law;

speed limit means a speed limit set under a road law.

(2) In section 42 in inserted section 49AAA in the definition of ***provide driving instruction*** delete "vehicle." and insert:

vehicle;

Note for this Division:

See the note to Section 4.

New part put and passed.

Clauses 52 and 53 put and passed.

New Part 3 Division 4 —

Mrs L.M. HARVEY: I move —

Page 42, after line 8 — To insert —

Division 4 — Repeals

54. Certain provisions of this Act repealed if not commenced

(1) If the *Road Traffic Legislation Amendment Act 2016* section 42 comes into operation on or before the day on which section 3A of this Act comes into operation, section 4 and Part 3 Division 2A of this Act —

(a) do not come into operation; and

(b) are repealed when section 3A of this Act comes into operation.

(2) If the *Road Traffic Legislation Amendment Act 2016* section 42 has not come into operation before the day on which section 4 and Part 3 Division 2A of this Act have come into operation, section 3A of this Act —

(a) does not come into operation; and

(b) is repealed when section 4 and Part 3 Division 2A of this Act come into operation.

Mrs M.H. ROBERTS: Why has it been necessary to move this amendment to the minister's own legislation?

Mrs L.M. HARVEY: This relates to the issue we had with the two amending pieces of legislation to the Road Traffic Act moving simultaneously through both houses of Parliament. It basically ensures that the provisions of the act are repealed, if they have not commenced, dependent on the order in which the legislation is proclaimed.

New part put and passed.

Title —

Mrs L.M. HARVEY: I move —

Page 1 — To delete "***2002***" and substitute —

2002*, the *Road Traffic Legislation Amendment Act 2016

Amendment put and passed.

Title, as amended, put and passed.