

**QUESTION ON NOTICE 1914, ANSWER ADVICE**

**HON NICK GRIFFITHS** (East Metropolitan - Minister for Housing and Works) [5.03 pm]: Subject to Standing Order No 138, I wish to inform the House that the answer to question on notice 1914 asked by Hon Murray Criddle to me, representing the Minister for Police and Emergency Services, should be provided by 22 June 2004. I am advised that the Minister for Police and Emergency Services is currently absent from Parliament due to illness and as such is unable to approve the answer at this stage.

**ONE NATION PARTY MEMBERS***Statement by President*

**THE PRESIDENT** (Hon John Cowdell): I acquaint members with two letters I have received in the following terms -

Dear Mr President

I wish to advise you that I no longer represent the One Nation Party in this State Parliament.

I will now be sitting as an Independent in the West Australian Parliament.

The letter is signed by Hon John Fischer, MLC, member for the Mining and Pastoral Region.

The second letter reads -

Dear Mr President

I am writing to officially advise you that I have resigned from the One Nation Party and will, for the short term, be sitting as an Independent Member.

The letter is signed by Hon Frank Hough, MLC, member for the Agricultural Region.

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

Resumed from an earlier stage of the sitting.

**HON GEORGE CASH** (North Metropolitan) [5.05 pm]: I have made most of the points that I needed to make. However, I indicate that the costs involved in impounding and confiscating a motor vehicle will be borne by an offender. The Opposition agrees with that proposition. I also note that in special circumstances, in particular in cases of hardship, a senior officer will be able to release an impounded vehicle. It is important that this discretion exist. On the question of confiscation generally, it has been put to me by a number of people that when a vehicle is confiscated, it could represent the imposition of a \$50 000 fine on the offender, assuming the vehicle is worth \$50 000. That is a very sizeable fine for such an offence. It is interesting that under clause 12, proposed section 80E states -

A court is not to make an order under section 80(1), 80A(1), 80B(1) or 80C(1) if it is satisfied that at the time that the offence for which the person is convicted was committed, the vehicle was a stolen vehicle or a hired vehicle.

That is an interesting proposition. The person who told me that the confiscation of a vehicle could be the same as the imposition of a \$50 000 fine on an offender also said that rather than a person having his \$50 000 vehicle confiscated, it would be more appropriate for him to either hire a car for the night or steal a vehicle for the purpose of carrying out hoonish behaviour. That was said in passing, but I understood the general thrust of what was being put to me. I am interested in the issue of the confiscation of vehicles. I note that proposed new section 78B states -

For the purposes of the *Sentencing Act 1995* section 8 the fact that a vehicle may be, or has been, impounded or confiscated under this Division is not a mitigating factor.

That is interesting, because it becomes an additional burden on some other sentence that is passed. However, the Government has said that it intends this legislation to be severe in its application to deal with hoonish behaviour in Western Australia. In that regard, the Opposition agrees with the general thrust of the Bill. However, we are not happy with the situation in which a police officer, of his own volition, having formed a reasonable suspicion about an offender, can have a motor vehicle impounded for a 48-hour period. The removal of someone's property is a serious matter and one that should be considered by a court.

I refer also to the issue of third parties. My original understanding of the Bill, when it was before the other House, was that it did not provide for any debts that were owed on a motor vehicle that was confiscated and later sold to be paid out to third parties. An amendment made to the Bill in the Legislative Assembly rectified that situation to some degree. However, the position of third parties is still very much discretionary. All that this Bill really provides is the opportunity for a third party to give notice of his interest, whether legal or equitable, in a motor vehicle. It will be up to a court to decide whether to recognise that interest by allowing that person to receive some of the funds from the sale of the confiscated vehicle. A balance of the money is to be paid into the consolidated fund in Treasury and would be used for normal government purposes. With those words, we support the Bill as best we can under the circumstances.

**HON FRANK HOUGH** (Agricultural) [5.10 pm]: I will be reasonably brief. Although in text it sounds very logical to impound vehicles belonging to hoons, the definition of “hoon” and the impoundment of the vehicle when there are other mitigating circumstances worries me considerably. Take for instance hoons and the vehicles they use in car parks. I know a couple of kids from overseas - they might have been Chinese or Indonesian - whose fathers could afford to buy them very expensive vehicles. It was nothing for these fathers to give me a cheque for \$60 000, \$70 000 or \$80 000 for their kids to buy a car - in fact one of them got a cheque for \$90 000 to buy a Porsche. These are well educated and well behaved kids. However, when they get into a car park with a bit of oil on the ground and a high-powered vehicle, do they become hoons? They become reckless young kids. However, these kids could not be called in Australian parlance “big hoon-type kids” as we refer to Australian males. These kids I knew were very slightly built young men who would not pose a great threat to anyone when they got out of their motorcar. However, to impound the car and refer to them as hoons is stretching the limit.

I do not have a problem with the police being given extra powers. I would love the police to be given extra powers in riot situations and many other situations in which they really need them. I would like to turn back the clock to 15 or 20 years ago when a policeman worked in the police force. Now they are in this thing called the “police service”; they are not out there to serve the community but to enforce law and order! This is a part of what this Bill does, however. It leaves a couple of unanswered questions. For instance, a young fellow, whom we will call Charlie Brown, might get into dad’s car, race down the street, behave like a hoon and do some burnouts. A police officer might pull him up and impound the car. Dad, a surgeon who is on call for emergencies, might be at home and it is his car that may be impounded. The kid might tell the police officer that it is dad’s car and that he is at home and needs the car. However, he may be a rude little boy, so the police officer will hang onto the car. It will be hard to read between the lines when applying this legislation in some areas. Another example of a difficult situation happened when I went out one evening and my brother-in-law, a young man at the time who was not a hoon, borrowed my car - he did not borrow it actually, he pinched it - acted like a hoon and wrapped it around a lamppost.

Impounding hire-purchase cars is another area of concern. If I had my hire-purchase car impounded, I would say to the police, “Here is the requested payment for \$245 a month, go for your life! I hope you can keep up with the payments.” A person certainly would not pay for the car if it had been removed from him and impounded. In another case, a young courier driver might go out to a car park on a Saturday night with other young people, and I guess this is where the definition of “hoon” and “uncivilised behaviour” comes together. He and his mates might have a few sherbets, then one of them may do a burnout in the car park and be followed by another person who tries to out burn the previous burnout. If the car of the young courier driver is impounded, and he has a courier run the next morning, he will probably find that he is unemployed. This legislation is an issue if a person needs a car for his job. Some young fellows with hotted up V8 utes do the same thing. If they are brickies’ labourers and bricklayers they definitely need their cars. There are far-reaching consequences when impounding and removing a car from someone for hoonish behaviour. I know we need to be tough and it is imperative that people obey the law. If anyone in this Parliament agrees that laws should be tougher, it is me. I suggest that people who behave hoonishly get the birch. However, I would not suggest that we go to the next stage, capital punishment, if we catch them. I do not think that being that tough would be acceptable. The point that worries me more than anything on this particular issue is what defines a hoon. At the time of catching an offender, a police officer has to decide whether the person is a hoon. I guess the word “hoon” should not have been used in this instance. It is a word that describes hoonish behaviour -

Hon Nick Griffiths: It was used in the second reading speech but it is not in the Bill.

Hon FRANK HOUGH: I have the second reading speech here. What is unacceptable behaviour? What will happen if the car is on hire-purchase or on loan without permission? A young adult might grab his mum’s car - a Celica or something that is quite hotted up - and go for a ride in it. I do not think a car should be impounded in those situations. Who will pay for the car if the car is impounded and the person is required to get it back? Will it be mum, who did not realise that her young Johnny took the car, who will have to pay for the towing, removal and impoundment charges or will young Johnny be charged? I quickly read through the Act and could not find who will be responsible.

Hon Paddy Embry: In the case of a hire-purchase car, it is actually owned by the hire-purchaser, is it not?

Hon FRANK HOUGH: Correct.

Hon Paddy Embry: If you were the hire-purchase company and your vehicle was being used for what is described as hoonish behaviour, you would probably like it to be taken back before it was destroyed.

Hon Peter Foss: But you then lose your property.

Hon FRANK HOUGH: The property is not transferred to the owner until such time as it is paid for in full.

Hon Peter Foss: The hire-purchase company will have its car confiscated and all it can do is sue the purchaser.

Hon FRANK HOUGH: To answer the question of Hon Paddy Embry, the hire-purchase company cannot take back the car because if the person is paying -

Hon Paddy Embry: I asked if you were the hire-purchase company, would you want the car taken back?

Hon Peter Foss: You would not want it confiscated because you would lose your car and your money.

Hon FRANK HOUGH: The company would lose its hire-purchase payments and its interest. To answer the member's question, a hire-purchase company would not take the car back; it would continue -

The DEPUTY PRESIDENT (Hon Kate Doust): I am pleased you have cleared that up, Hon Frank Hough. Perhaps the member could speak to the Bill at hand rather than answer questions.

Hon FRANK HOUGH: Those were the few areas in the Bill with which I have trouble, and in relation to which I will ask questions during the committee stage. I do not have problems with giving police officers, in certain circumstances, increased powers. There are other areas more important than those covered by this Bill in which the police should be given extra powers. I will be supporting the Bill, but I will be asking these questions during the committee stage.

**HON JIM SCOTT** (South Metropolitan) [5.20 pm]: This is one of the Bills the necessity of which I wonder about, given that significant powers are already available that address most of these issues. The Greens (WA) will be supporting the legislation, but I would have thought that there were much greater imperatives to get on with than this. I will put a number of issues to the minister for clarification in his response to the second reading debate. There are certain exemptions, for instance, for people who speed at greater than 155 kilometres an hour. Hon George Cash raised the question, about which I have also wondered, of the situation in which a civilian in an emergency is able to exceed the speed limit, taking reasonable care, as the police officer is required to do under the amendment to section 60. There is some capacity for an officer on duty to exceed the 155 kilometres an hour limit, but it also occurred to me that that act on duty could include a situation in which the officer is conveying the Commissioner of Police to make a speech somewhere, and is running five or 10 minutes late. Would that be regarded as being on duty? We know that in the past police officers who have not been actually pursuing anybody have been involved in accidents as a result of speeding.

Hon George Cash raised the issue of young drivers who do wheelies and burnouts in the car parks, and so on. That problem existed at South Beach in Fremantle, and there were considerable complaints about it. The council ended up putting in some speed bumps, which seems to have solved a lot of that problem. I wonder about some of the solutions proposed to these problems. Wherever there are young people, there is no doubt that they will take risks in one way or another. Surely, they should not be allowed to do that where they may cause injury to people or to themselves, but I often feel that we should be taking a more proactive approach rather than introducing big penalties. Perhaps there should be facilities where young people can learn to drive cars in ways that may not be allowed on the road, and greater efforts to show them how to do that in ways that are not likely to cause damage or injury to themselves or anybody else. Maybe that would be a way to take a lot of steam out of the issue. Although I understand the need to prevent them causing nuisance or injury to other people, I do not know whether burnouts are a great cause of deaths in the community. They would seem to be more a nuisance than anything else.

This legislation is a little over the top in that regard, especially considering some of the definitions of "circumstances of aggravation". One of the circumstances is where the skill of the vehicle's driver is being tested or contested in any way. All learners or probationary drivers being taught how to drive are being tested. The skill of the driver is being tested. Does that mean that a person doing a driving test comes under this law? Another circumstance is where a vehicle has wheel spin on one or more of its wheels. Anybody who has driven on country roads knows that it is possible to lose traction with one or two wheels quite often on a gravel road. On metropolitan roads, after the first rains of the season, a lot of oil is brought to the surface, and vehicles lose traction. Experienced drivers know that after the first rain they must brake very slowly when approaching traffic lights, but inexperienced drivers, though they are certainly not hoons, will experience a bit of traction loss when driving a vehicle. Some of those interpretations are a bit over the top, and could be used maliciously against young people who may be driving quite normally, but find themselves in circumstances in which those things can happen. I ask the minister to clearly delineate how losing traction on two wheels, or when the driver is being tested in any way, can be seen as circumstances of aggravation. The paragraph in the proposed section that deals with the skill of the vehicle's driver, uses the words "tested or contested", but if it used the words "tested and contested", it might be a different matter.

Questions have been raised about the confiscation of vehicles. One that I wondered about was the provision in the Bill for the confiscation of a vehicle from a person driving without a driver's licence, when the court is satisfied that in the five years before the day on which the offence was committed, the person was convicted of two previous impounding offences. Could those two previous impounding offences have resulted from a single event? Could a person incur two penalties from one incident? I would like the minister to clarify whether that provision refers to separate instances or offences that could come from the same incident. Apart from thinking that the Bill is a bit over the top and a bit dramatic for what it is likely to achieve, I do not suppose it will cause the community any great harm. I do not think it will save too many lives, apart from the section dealing with driving significantly above the speed limit in built-up areas, but on the odd occasion it may bring about some improvements and it should be supported. I would have thought that the Government could have come up with some better legislation than this if it really wanted to deal with the real causes behind road deaths in the community. I am not saying that the section concerning speeding should not be included, but we already have laws about speeding, and I would have thought they would be sufficient. I support the Bill.

**HON PETER FOSS** (East Metropolitan) [5.31 pm]: This is another example of window-dressing on the part of this Government. This is the sort of legislation that is brought in when a Government knows perfectly well that the police are not doing anything to use the laws they currently have. It suggests that if the Government passes some legislation, it will feel as though it has done something. The biggest difficulty in this State is that the police have huge powers but they do not use them. If the response every time is to give them more powers, they will just have more powers that they do not use. The powers will be abused but not used. The police are already abusing some of the powers they already have. Although there are many aspects of this Bill to which I do not object, it has been very poorly phrased and thought through. It contains some dangers and I would like to draw attention to them.

Generally, most people are fairly dissatisfied with the way traffic offences are policed in this State. If people were asked what they thought about traffic policemen, I think they would say that they do not like traffic policemen. There is no doubt that traffic police in this State are incredibly assiduous. The same cannot be said about home burglary police. If a person wants a policeman to come to his house after a home burglary, he can forget it - they will not turn up. If the police do turn up, they will tell him there is no point in doing anything. However, we are renowned throughout the world for the rigorousness with which traffic offences are enforced by traffic police against the public. When it is the big hoons down at Scarborough, suddenly the enthusiasm is lost. The police pull us over, but do they pull over the hoons at Scarborough? No. Do they tackle the hordes of bikies who drive around all the time without helmets? No. However, if our children ride down the street on their bicycles without helmets, they are fined, yet every day I see huge bikies going past without helmets on and nobody bothers to stop them. Why this difference in behaviour?

I had hoped Hon Derrick Tomlinson would be here today, because together we could have sung the *Gendarmes' Duet*. The reality is that the guardians of law in this State seem to have the same attitude as the bold gendarmes in the *Gendarmes' Duet*. If they come across a helpless woman or little boys who are doing no harm, they will run them in, because they are the bold gendarmes, but when they come across somebody who is a bit bigger than they are, they absent themselves. I do not have any problem with these powers being used against hoons. I just have a severe doubt that they will be used. If the police do not use the powers they currently have against hoons, why will they use these laws? They do use these powers against ordinary citizens, and I believe they abuse them. A classic example appeared in the newspaper recently and got quite a lot of publicity. A young driver was picked up for having an air freshener hanging on his rear view mirror. Something needs to be done about the hoons at Scarborough, yet the police are busily stopping young men with air fresheners dangling from their rear vision mirrors. Come on! What is this about? We know there is a problem. The Government has told us there is a problem with hoons. Why do the police not do something about the hoons instead of young men with air fresheners? A couple of people came to see me recently about police bothering young blokes in cars. When police see a young bloke in a car they will stop him because they regard him as a person of interest. I can remember sitting on a committee many years ago when "Z" or "Zee", as he was called - Deputy Commissioner Zanetti - wanted to tell us all about these terrible -

Hon Jim Scott: He was very fond of paintings.

Hon PETER FOSS: Yes. He was a well-known policeman. He gave evidence to the committee and he told us about these terrible young drivers. He wanted to tell us how bad they were. I must confess that after he had finished giving his evidence we were horrified at the police. One of the interesting things he said was that the police had to concentrate on those people of interest. It turned out that the people of interest were any number of young Aboriginals who were more than two. Even one Aboriginal was a person of interest, because there was a higher possibility of Aboriginal people committing crimes; the police did not waste their time on people who were not Aboriginal but went straight to the Aboriginals. I think I have told this House before about how my firm employed a young Aboriginal with the intent that he could eventually become a lawyer. We gave him good pay, so he went out and bought himself a nice new Commodore. He got stopped nearly every day by the police because he was Aboriginal and was driving a new Commodore and therefore he had to be up to no good. That is the way the police work. If a person is a young driver, he gets stopped as a matter of course.

I received a complaint concerning a young bloke. A policeman was coming in the opposite direction, he did a U turn, stopped the young bloke so he could look at his car, could not find anything to give him a yellow sticker for and then did a burnout when he left - the policeman did a burnout! Who is going to stop that policeman? That policeman showed what a hoon he was by stopping a young man purely because he was a young man and then driving off like a hoon himself. Quite a few of the police are hoons. I would like to hear from the minister, if we are dealing with hoons, about what happened to the two hoonish policemen who were mentioned in the newspaper who drove past a police trap with bags on their heads? Did they get prosecuted for reckless driving? Did they get dismissed from the Police Force? My opinion is that that was reckless driving - to drive at that speed past a speed trap with bags over their heads. That was disgraceful behaviour by police. "Bullfrog" Watson came out and criticised them in the first instance when he thought they were not policemen, but not a word was said when it turned out that they were policemen. I have no time for Superintendent "Bullfrog" Watson. I know some of my colleagues have a lot of time for him, but I have no time for him because he represents what I think are the worst of policemen: those who want to go around and bully people.

Hon Robyn McSweeney: My friend, John Watson.

Hon PETER FOSS: I do not like him one little bit. The problem with him is that we did not hear from him. It was suggested that he had been suppressed from talking by the commissioner. The day that Superintendent Watson can be suppressed from talking by the commissioner will be a very unusual day. That man cannot be suppressed from talking. He will talk with his mouth full of cement under 10 feet of water. The reason he did not talk is that the police look after their own in those circumstances. If this piece of legislation is about dealing with hoons, and we have police hoons, what is the Government doing about them? The Government has the ability to do something about them. I would like to receive an answer from the minister about what has been done about those hoons who were identified as being the policemen who drove at speed past a speed trap in the south west with bags over their heads? Have they been prosecuted? If so, what were they charged with? What has been the result? Are they still in the Police Force?

Hon Robyn McSweeney interjected.

Hon PETER FOSS: Good. I am glad to hear that they were chucked out.

Hon Bruce Donaldson: Time elapsed, I think.

Hon PETER FOSS: It was too late, was it? It was over six months. On 6PR, I think, only this morning or very recently, a bloke said that he saw a policeman who was riding a motorbike stand his bike up on the back wheel. That person said that he has the registration number of that bike. I suggest to the minister that, if we are dealing with hoons, he get in touch with 6PR to find out the details of the caller who said he had the registration of the police traffic person and have him prosecuted. If the Government is talking about doing something about hoons, it should do something about hoons. The Government should show it can deal with reality, rather than have good news Geoff always giving us the news that never has any substance - I think the newspaper is getting it right at long last when it says "no substance, and lots of words". Here is an example of another bit of no substance. Let us see some action in which the Government does something about those people.

Hon Bruce Donaldson: He was at *My Restaurant Rules*.

Hon PETER FOSS: He had to be seen at *My Restaurant Rules*, but only while it was on television. There is no point going to the restaurant after the show had finished; he would not get any coverage and would not be able to show his big grin to the nation.

Hon Bruce Donaldson interjected.

Hon PETER FOSS: I did not watch it because I do not have a television. Only the members of the Labor Party think that grin looks good.

I refer to clause 8, which amends section 60 of the Road Traffic Act. Proposed subsection (1a) reads -

A person who drives a motor vehicle at a speed of 155 km/h or more commits an offence.

Of course a person would commit an offence, the speed limit is 110 kilometres an hour. That is not a big problem because it will be a separate offence. Proposed subsection (1b) reads -

A person who drives a motor vehicle at a speed exceeding the speed limit set under this Act for that vehicle or the place where the driving occurs by 45 km/h or more commits an offence.

That is a bit strange because in some ways the effect will be the same as proposed subsection (1a). A person who drives at a speed of more than 155 kilometres an hour is definitely driving more than 45 kilometres an hour over the limit because the limit is only 110 kilometres an hour. I assume it applies only on the roads and not to a person racing at Wanneroo raceway or the motorplex. Proposed subsection (1c) reads -

Despite subsections (1a) and (1b), the driver of a motor vehicle is not guilty of an offence under those subsections if -

- (a) either -
  - (i) the motor vehicle is being used to convey a member of the Police Force on official duty; . . .
- (b) the driver is taking reasonable care; and
- (c) the vehicle is displaying a blue or red flashing light or sounding an alarm unless, in the circumstances, it is reasonable for a light not to be displayed or an alarm not to be sounded.

Interestingly enough, it does not say that it is necessary for him to drive at that speed; it is just enough that he does it.

Hon Jim Scott: That is what I was just saying.

Hon PETER FOSS: I know. The Bill does not say anything about that whatsoever. Hon Jim Scott was quite right; it might be considered necessary. However, if he feels like driving fast and is on duty and turns on his blue light, it is all right. Why on earth should policemen be allowed to drive around at more than 40 kilometres an hour over the speed limit if it is not necessary?

Hon Derrick Tomlinson: Through Kings Park!

Hon PETER FOSS: I was waiting for Hon Derrick Tomlinson because we were going to sing the *Gendarmes' Duet*.

Hon Nick Griffiths interjected.

Hon Derrick Tomlinson: I won't be quite so tuneful!

The DEPUTY PRESIDENT (Hon Kate Doust): Order! I do not think members should be encouraging Hon Peter Foss or Hon Derrick Tomlinson, who does not have the call.

Hon PETER FOSS: We sing very well.

The DEPUTY PRESIDENT: Order! Hon Peter Foss can continue his remarks on the Bill.

Hon PETER FOSS: I think the *Gendarmes' Duet* is germane to the Bill but I do not think we can have two speakers - or singers - at a time.

However, firemen, of course, can go fast, but they must be responding to a fire or fire alarm. At least firemen must have a reason for speeding. I suppose the police do not like to be required to give reasons. A driver of an ambulance must be officially responding to an emergency or rescue operation, but policemen do not have to.

Hon George Cash interjected.

Hon PETER FOSS: Yes, it could. A police officer might not be unwittingly speeding; he might be trying to catch someone. I do not know whether police officers should speed in an emergency. I prefer that on most occasions they do not speed. Generally speaking, an emergency arises only as a result of the police trying to catch people. An ambulance is a motor vehicle. Everybody else must have a reason except a policeman. Policemen are allowed to drive as fast as they like as long as they turn on their blue light and drive with reasonable care, whatever that might be.

I do not think proposed section 62A is a problem. It reads -

A person who wilfully drives a motor vehicle in a manner that causes -

The minister might like to confirm that "wilfully" means the wilful part is not that he drives a motor vehicle. We assume that he was not unconsciously driving a motor vehicle. He was wilfully driving a motor vehicle so that it caused the excessive noise to be made or for smoke to come from the vehicle. It has been written in a rather strange way. I refer to the very famous case we all studied in law school about what "intention" means. It was raised in the context of firing a rifle. The High Court dealt with a very interesting case about a person who fired a rifle that actually hit someone. The person said that he did not intend to hit the person, but it was enough that he intended to fire the rifle. Another very important precedent occurred in Papua New Guinea when a person shot his wife with his rifle and claimed that it was an accident. The only thing that upset that case was that he shot his wife twice - but it was a single-shot rifle. It would be quite some accident in that case.

Hon Kim Chance: He was a very unlucky person.

Hon Nick Griffiths: His wife was a very unlucky person.

Hon PETER FOSS: She was even unluckier. The wording should be a person who wilfully drives a vehicle in such a manner "so that it causes" or something of that nature so that there is a relationship between the wilfulness and the result. Otherwise the implication could be that he wilfully drove the motor vehicle; he did not suddenly find himself sitting in the vehicle with that happening.

As a whole, the offences are not too bad. I do not have any problem with proposed subsections (1a) or (1c) other than proposed paragraph (a)(i). I do not have a problem with proposed section 62A other than a minor grammatical change. However, the problem comes with the confiscation and impounding clause. I do not have a problem with vehicles being confiscated after a court case other than I feel the penalty is a little too harsh. If, as someone said, the vehicle is worth \$50 000 - not many new vehicles cost less than that these days - it is a pretty big fine for what might involve a young kid giving his tyres a bit of a burn out when no-one is around. One of the advantages of having this offence is that the people involved can all be charged with reckless driving. I do not think reckless driving always applies, albeit the courts always find the offenders guilty of reckless driving. By virtue of the fact that there is not a separate offence, that is about the only offence with which a person in that situation can be charged. It is an advantage to have this new offence because at least it means that there is an offence with which people can be charged. In some cases, it will not be reckless driving. That is not a bad idea. However, a fine of \$50 000 is a bit harsh for a person doing a burn out when no-one is around and no harm is caused. Funnily enough, it almost sounds like mandatory sentencing. Perhaps, this Government is in favour of mandatory sentencing after all, despite all the signs to the contrary in every other respect in which it has dealt with mandatory sentencing. It supports mandatory sentencing for burning out tyres but not for home burglary, which is quite interesting. This Bill could create a highly inappropriate penalty for what might be a minor offence.

Hon George Cash: It will be inequitable.

Hon PETER FOSS: Yes. It has the potential to be inequitable. That is a bit of a problem. The process by which it occurs seems to be extremely unjust. The penalty may in fact fall on totally the wrong person. Hon Frank Hough gave

a very good example of a hire purchase vehicle being involved. Will the person from whom the vehicle was bought under hire purchase be able to say that the vehicle cannot be confiscated? No, that person cannot say that; it is not within the definition of "hired". The definition of "hired" reads -

in relation to a vehicle, means a vehicle that -

- (a) is owned by a person whose business is the short term hire of vehicles;

That does not apply. A hire-purchase company hires vehicles long term. If it is part of a business's fleet, it does not apply either and under a written agreement it is hired as short-term use. None of those provisions applies to hire-purchase vehicles. The owner of a hire-purchase business would lose his property if he hired a vehicle to a person who happened to use the car to do a few burnouts. A parent might lend his vehicle to his child. Presumably parents do not want their children to be hoons, but the parents may not know what their children are doing unless the parents follow their children every hour of the day that the children are in the car.

Hon Jim Scott: What if your car gets stolen?

Hon PETER FOSS: That is covered. If a parent lends the kids the car, does that mean the parent must be penalised \$50 000 because the children behave that way? The children may be adults. They almost certainly are adults because until they are 17 years old there is no point in them having a car. One year later the children would become adults.

Hon Jim Scott interjected.

Hon PETER FOSS: Yes, that could be even more disastrous.

Hon Derrick Tomlinson: I don't think it relates to impounding.

Hon PETER FOSS: It applies to confiscation.

Hon Derrick Tomlinson: Confiscation is the "three strikes and you're in" law. Look at proposed section 80A(2) on page 13. Not only is it mandatory sentencing, it is a "three strikes and you're in" law.

Hon PETER FOSS: Absolutely. It is extraordinary that the legislation applies the penalty to somebody who has nothing to do with the offence. Perhaps the new three strikes law could be that if a person is the victim of three home burglaries, he should have his house confiscated to stop him from being so careless as to allow people to burgle his house. That is what this legislation is like - unless a person breaks into his own house. This legislation seems to be draconian. It does not seem to allow for the situation in which one person has let another person use the car. It assumes that the owner of the car is somehow complicit by the mere fact he lent somebody the car. A stolen or hired vehicle is not to be impounded or confiscated if the court is satisfied "that at the time that the offence for which the person is convicted was committed, the vehicle was a stolen vehicle or a hired vehicle". As Hon George Cash so rightly said, it is an encouragement for people to steal a vehicle if they intend to hoon because the offenders would get the extra penalty of losing their own car if they were convicted.

Hon Murray Criddle interjected.

Hon PETER FOSS: Yes. It is extraordinary. I do not think a vehicle should be confiscated from a person if the car has been stolen. It seems to me to be an invitation for people who are going to commit one offence anyway that they might as well commit two offences. At least they would get to keep their own car. The strange thing is that this legislation is probably not needed because of the current confiscation laws; although, this Government has hardly used those laws. The previous Government passed some of the best confiscation laws in Australia and this Government has not bothered to use the unexplained wealth laws against one person. The Attorney General sat on a motorbike looking like a hoon with the Director of Public Prosecutions behind him to make people understand how the confiscation laws would work but the laws are not being used very much. We are being asked to pass another law to confiscate vehicles when it is not necessary. The other legislation is fairer to third parties. Under this legislation it is perfectly all right for hire-purchase and lent vehicles to be impounded. That is extraordinary.

I have a problem with vehicles being impounded. I started my address on this debate by talking about the two hoons who drove past the traffic policeman down south. We have heard about a case that was mentioned on the radio recently and another case regarding air freshener. I also referred to the policeman who stopped a young boy and then the policeman did some burnouts afterwards. I do not wish to criticise the police, but really, they are not the level of people to whom this sort of power should be entrusted. They are not judges or magistrates; they are policemen. Being a policeman is not a good job. Often people who become policemen are rough nuts. I do not believe that rough nuts should be impounding people's cars in cases in which there is a real possibility of some doubt about the evidence. Cars are impounded when they have been illegally parked. The evidence is clear when a car is illegally parked. However, whether a person has been squealing car tyres or doing other things is often a matter of contention. The police have a tendency to use that against young men knowing full well that it is the type of offence that it is hard for a young man to get out of. It is the type of offence that is used in a bullyboy way, and some police are bullyboys. In dealing with these powers we must recognise the people to whom we are entrusting them. They are not citizens with great judgment. They are not people who have impartial, fair, even-handed, unbiased, uninvolved means of dealing with these matters. They are at the coalface. The police sometimes get annoyed, hassled and upset with young blokes and the police have a

tendency to take it out on them. Which member of Parliament has not had a constituent complain to him or her about the unfair treatment the constituent has received from a traffic policeman? How many members have not heard a pretty convincing tale told to them by a quite respectable citizen of unfair treatment by a traffic officer? Yet, we are now saying that we should entrust these policemen at that level with this power. Frankly, I am not too keen on it. Why can the police not get a warrant to impound the vehicle? Then at least they would have to put on oath the claim that they say supports the impoundment offence. The police would then have to ask an independent person to authorise the policeman's actions. Why would that be hard? Why must the police have this power? The only way in which it will be supervised is by a senior officer. Come on! Do members really think that that will make the slightest blooming difference? What is a senior officer? It is a member of the Police Force who has obtained the rank of sergeant or a rank higher than that of sergeant. Sergeant - come on! Sergeants are known as the crust of the Police Force. There may be very good sergeants in the Police Force. However, members know that there are a lot of sergeants who are waiting to retire. Sergeants are hardly the paradigm of judgment in the Police Force. Most of them have been in the Police Force for a long time and have obtained that rank by seniority. They are left over. Granted, they are disappearing; however, they are not regarded as what I would call the cream of the Police Force. Sergeants are the crust of the Police Force. Frankly, if the Government wants to get away with that type of provision, the legislation should at least say that the process will be supervised by an inspector or someone with a higher rank. However, I do not think that the process is right. Why can a police officer not go to a justice of the peace and swear out a complaint to have a vehicle impounded? Under that process, vehicles could be impounded. A policeman would have only to go through a known process in which he would state on oath what happened so that the policeman could be prosecuted if he got it wrong. What do we say? Do we say that the policemen can be prosecuted if they get it wrong? No. I think the legislation gives them an exemption.

Hon George Cash: It is reasonable suspicion.

Hon PETER FOSS: All the police must do is have a reasonable suspicion, which is dealt with under clause 4, new subclause 5(6). I suppose that the police must act in good faith under that clause. The police should be prosecuted if they do not tell the truth. They are going to cost people an awful lot of money when they impound vehicles, which could affect the offender's work. The offender has absolutely no comeback. The police should at least swear out a complaint before being entitled to impound a vehicle. I do not like the idea of a vehicle being impounded on the say-so of a policeman and the assumption that the case might be looked into by a sergeant later. Frankly, the provision in the legislation is a sop and is unlikely to work.

I would like the legislation to provide that vehicles could be impounded when the policeman has obtained a warrant, which would determine the amount of time a vehicle could be impounded. The police know what is the process for swearing a warrant; they know how to do it. I do not see why people should be arrested without a warrant. I do not consider that to be appropriate.

Hon Jim Scott: On the matter of impounding, one person could get fined \$500, another person could be fined \$300 and yet another could be fined \$40 000.

Hon PETER FOSS: Is the member talking about impounding or confiscation? I have some concerns about confiscation before a court. The legislation says "may", not "must". Therefore, a court does not have to do it. After reading the debate, I hope the minister will confirm that it is not intended that the vehicle should be confiscated if in fact that penalty is out of all proportion to the offence that has been committed. It may be possible to say that someone has an expensive vehicle and has been let off twice already and that the person knew that the expensive vehicle would be impounded.

*Sitting suspended from 6.00 to 7.00 pm*

Hon PETER FOSS: I forgot to give another example of why I was concerned about the quality of the people to whom we are giving these powers; that is, the recent case of the police officers who abused American service people. Obviously it is just a newspaper report at this stage, but it is rather concerning. I think it again indicates that there are people who behave like that among the group of people on whom we intend to confer these powers. I am saying that, knowing that 90 per cent or even 95 per cent of the Police Force are not like that. However, in conferring these powers we must consider the nature of the people to whom we are entrusting them and why we are doing so. Given that those people have extensive and almost totally authoritarian powers under the Road Traffic Act and the Police Act that are not used, I wonder what is the point of giving them powers that make greater the possibility of abuse. These powers must be looked at to see whether they are proper. For a start, the definition of "senior officer" should be redefined. Why must a senior officer be a sergeant? There is no reason that it should not be an inspector or a higher rank. Secondly, I suggest that rather than the negative provision that a senior officer may disallow the confiscation of a vehicle, it should be positively affirmed by a senior officer who satisfies himself or herself that there is a reasonable belief that an offence has been committed. The process, therefore, would be slightly different. The Bill states that an officer can enter any premises for the purpose of seizing keys. That is just extraordinary. If the car has been confiscated, why does the officer need the keys? It does not appear to be necessary to have the keys to confiscate the car. It appears that the car could be grabbed on information received rather than an officer seeing it involved in the commission of an offence. The Bill states that a member of the Police Force may impound a vehicle if the member reasonably suspects that an offence



has been committed. The member is not required to have been present at the offence, as long as it happened. Normally the powers of hot pursuit and so on are given for offences that take place in the sight and with the knowledge of a policeman. However, the powers in this Bill mean that if somebody came along and said that he or she saw Hon Nick Griffiths doing broggies on his way back home after Parliament -

Hon Nick Griffiths: You would not believe him!

Hon Derrick Tomlinson: If he was doing burnouts, we would.

Hon Nick Griffiths: You know it would not be true.

Hon PETER FOSS: I know because I am that sort of person. However, what if that person was a policeman who was much more willing to believe that of Hon Nick Griffiths than I am?

Hon Nick Griffiths: I do not think he would be willing to believe that.

Hon PETER FOSS: I am the sort of person who has the ability to make that judgment, but I am not sure that the average PC Bloggs would be able to do so.

Hon Nick Griffiths: I think police officers would make the same judgment.

Hon Derrick Tomlinson: No, the Bill does not refer to a "reasonable judgment".

Hon PETER FOSS: No.

Hon Derrick Tomlinson: The officer need hold only a suspicion.

Hon PETER FOSS: Yes, he need only reasonably suspect an offence had been committed. Let us look at the definition of "reasonably suspect". The Bill has gone to a great deal of trouble to make sure that a reasonable suspicion must be held. Clause 4, proposed subsection (6), in part, states -

the person, acting in good faith, personally has grounds at the time for holding the suspicion;

I do not have a problem with that. Although it states that the person personally has grounds, it is a bit better. The proposed subsection continues -

it is reasonable, when judged objectively, for the person to hold the suspicion on those grounds at the time . . .

Hon Derrick Tomlinson: Of course, by the time you have reached that stage, the car has been impounded.

Hon PETER FOSS: That is right. I think we could beef up that provision a bit: a person, acting in good faith and of his own knowledge, has grounds for holding the suspicion. Is that what "personally" means? I think the minister might want to look at that.

Hon Nick Griffiths: Yes. Is that on page 2?

Hon PETER FOSS: Yes. Does that mean that a person of his own knowledge must have grounds at the time of holding the suspicion? That is what clause 4 should say, which might make it a little more acceptable. The usual notion of reasonable suspicion does not mean that it must be a person's own knowledge. Proposed section 79C states -

A member of the Police Force, other than a senior officer, who impounds a vehicle under section 79 or 79A is to inform a senior officer, as soon as practicable after the vehicle is impounded, of the grounds on which the member suspects . . .

Proposed section 79D states -

The Commissioner is to ensure that an impounded vehicle is not released before the impounding period ends unless . . .

That phrase should be turned around the other way so that it says that the "Commissioner must release an impounded vehicle unless a senior officer is satisfied in respect of the matters referred to in proposed sections 79A(a) and (b) or 79A(a) to (c) about which a member of the Police Force is required to have a suspicion, that there are reasonable grounds for the member to have that suspicion". The concern I have is that a member of the Police Force will not go around to see whether there are no reasonable grounds; that matter will just be left. There does not appear to be a duty on the police officer to inquire; nor does there appear to be an obligation to release the vehicle if he is not satisfied in respect of those matters. All that the proposed section says is that there is no obligation to ensure that the vehicle is not released. That is a strange way of doing it too - the officer is therefore not to let the vehicle go unless he is not satisfied. There is nothing to say that he must inquire or satisfy himself. I would have thought a small review of proposed section 79D(2) would provide for a real check so that a senior officer must satisfy himself or herself that the person had those grounds, otherwise the vehicle is to be released. Then proposed section 79C should be separate and the officer may release the vehicle if he believes there will be exceptional hardship. That is a more positive provision in that the officer must be satisfied the other way.

Proposed section 79C differs from proposed sections 79A and 79B. The legislation could be made considerably more satisfactory by a senior officer being an inspector or above and having a positive requirement to satisfy himself that

there are reasonable grounds for suspicion. I would feel a lot happier if that were in the Bill. It seems to me that as it stands at the moment it is a little too easy for it to be done at a very low level. Why should it not be a commissioned officer? One would hope that by the time people become commissioned officers, the chances of them being yahoos, like those we have learnt about, are fairly remote. One would assume that the system is good enough to remove yahoos in the course of people becoming commissioned officers. A sergeant could be of a reasonably unsuitable nature to make judicial-type decisions, if I might put it in that way, and this is a judicial decision. We do not normally confiscate people's property even for a short period without some sort of judicial process. I would prefer that we did it by warrant, which is a well-known, common process. Police can use a warrant, seize the property, go before a justice of the peace and satisfy the justice of the peace. If a person is arrested, he must immediately be taken before a JP and be given the opportunity to be bailed. The same should apply when property is taken off people, especially in our society in which some people cannot get around without a car. If a car is taken off somebody in the country, he is virtually marooned.

I believe there are real problems with the legislation, which could be improved by a little more attention to its wording. As I have said, the confiscation provision has some problems, but they are partially able to be addressed by virtue of the fact that the question does at least go to a court that has a discretion and, one would hope, it would understand it. I do not believe that we must deal with the question of other interests than just short-term hire. I cannot see why we cannot take into account long-term hire or why people who lend a vehicle lose their vehicle simply because they have been generous enough to lend it. On the other hand, I can see that the Government was trying to prevent mere evasion. I understand that the provision is not used very often in Queensland, but I believe we should get the law right.

Although I can see some totally unobjectionable parts to this legislation, I have some doubts about it as it currently stands, simply because I believe that it has missing from it some of the most elementary protections for falsely accused people. Let us keep in mind that the big problems in our society are not the fact that these provisions are used against malefactors, but we hear of abuses when they are used against people who are not malefactors. That is why there are protections. The protections are there to protect the ordinary members of society from abuse of those powers by the very Police Force to which we entrust the powers because nobody will look after them or enforce them. We continually address the problem with corruption commissions and so on because we know how difficult it is to pick up the abuse of power. I believe that abuse of power is a bigger problem in this State than corruption. I believe that it is a much more alarming phenomenon than corruption. I am not saying that when corruption exists it is not alarming; I am saying that I believe the abuse of power is more common.

I am waiting to see what will happen to this legislation when it gets past the committee stage. It will certainly need some scrutiny at the committee stage to see what it means and what the Government may be prepared to do to improve some of the processes.

**HON DERRICK TOMLINSON** (East Metropolitan) [7.47 pm]: I rise because I have some concerns about this Bill. I think that each of us has grown accustomed in recent years to the reflex action, when we see a Multanova at the side of the road, of seeing if it has flashed. Alternatively, we instinctively look down at our speedometer and then look at the Multanova to see whether it has flashed. Alternatively, we have the experience of passing a sign that reads, "You have just passed a Multanova". Our immediate thought is: did we see a flash? The flash tells us whether we have been naughty.

I recently had quite a different experience on my way to Parliament. At about 8.30 am I was driving down Onslow Road in Shenton Park when suddenly a sign flashed in front of me. I immediately looked at my speedometer and thought that I was okay, but then I realised that what I had seen as a flash was in fact a sign that read, "Your speed is 44 kilometres an hour. Thank you." I thought, is that not nice, because I was doing 44 kilometres an hour in a 50-kilometre zone. Every time I drive down Onslow Road these days I find myself driving at 44 kilometres an hour.

Hon Graham Giffard: It happens when you get old.

Hon DERRICK TOMLINSON: No, it does not happen when people get old; it happens when good behaviour is positively reinforced.

Hon Graham Giffard: My mother does 44 kilometres an hour everywhere.

Hon DERRICK TOMLINSON: If I were the member's mother I would be very cautious too, because look what happened once when she was not paying attention.

So often in legislation what we are about is punishing people. We are looking, particularly with road traffic legislation, to punish people so that they change their driving behaviour. I recall over many years the changes made to punishments to encourage people to change their driving behaviour. It is all to do with the number of people killed on the roads. Guess what? Every time we introduce some new punishment there is a decline in the number of road deaths, and then shortly afterwards the figures take off again. Even though over time the mortality rate on our roads has declined, it is still far too high. I do not believe that punishment has a great deal to do with it. That is a philosophical point.

I wonder whether we need to reconsider our position, especially when it comes to three strikes legislation. Let us be quite clear about this: this is three strikes legislation. Three strikes and people lose their cars, three strikes and they are out or three strikes and they are in. I have heard reference to hoon and burnouts. I think I know what a burnout is. I

have seen young people do burnouts. I am not quite sure what a hoon is. I went to the *Oxford English Dictionary*, and the nearest definition I could get to “hoon” was “hooligan”. A “hooligan” is the name given to Irishmen of south London who were associated with ruffian groups. I do not know whether “hoon” is an abbreviation of “hooligan”, but there is no reference to hoons in the dictionary. I understand that these hoons do burnouts in particular places in Perth, such as the car park at Scarborough Beach. I understand also that these hoons do drag-racing along Leach Highway and in Rockingham.

Hon Jim Scott: I think a hoon is a hooligan at speed.

Hon DERRICK TOMLINSON: I see. I do not know who they are. All I know is that I can recall as a 16 or 17-year-old fellow meeting a group of my peers every Friday night at the Bright Spot at Sandringham Hill. They were not called hoons. They were called the boys. The boys used to meet at the Bright Spot, and they all drove hotted-up 1936 Ford V8s -

Hon Peter Foss: Great stuff!

Hon DERRICK TOMLINSON: They were. I saw one being driven on the road ahead of me just the other day. It was an absolutely beautiful vehicle - a hotted-up 1936 Ford V8. The boys would stand around getting high on hamburgers. They were real hamburgers in those days - not Kentucky Fried hamburgers, but real hamburgers. This was in the days before the mobile phone, but suddenly a message would come through that a fight was on at the drill hall in Victoria Park, and the boys would get into their cars and hoon down to the drill hall, which was near the corner of Canning Highway and Great Eastern Highway, and they would get involved in the fight. They would come back with their shirts torn, and with scars, and they would discuss who they had punched, how they had punched him and how many times they had had to punch him before he hit the floor. As members can imagine, the boys absolutely prized their cars. However, the car that was the most prized was the one that was driven by the most proficient driver. The most proficient driver, who will remain unnamed -

Hon Peter Foss: You!

Hon DERRICK TOMLINSON: No. I was on a bicycle. I could not afford a V8. The car that was the most prized was the one that was driven by the most proficient driver. He subsequently became a champion ruckman for Swan Districts. He was ruckman for the team that won the grand final under Hadyn Bunton.

Hon Nick Griffiths: There were three of them.

Hon DERRICK TOMLINSON: If there were three of them, then for want of a better name let us call him Fred.

Hon Nick Griffiths: Be careful!

Hon DERRICK TOMLINSON: This gentleman was revered as the best driver, as indeed he was. No-one could drive a vehicle better than he could. It was fascinating to watch these boys, who prized their vehicles so much, when the message came through that a fight was on at the drill hall. There was a scramble. It was like the scenes in the movies about the squadrons scrambling during the Battle of Britain. They would all scramble, but they all wanted Fred to drive their car. Even if Fred's car was off the road, he always had a car to drive, because they knew that if he drove their car, it would probably out-perform all the other cars. They revered this bloke. They revered his skill at driving a car, and they wanted him to drive their car - which they loved beyond everything else, except their mothers - because that would prove that their car was something special. They drove 1936 Ford V8s because in the 1950s they were pretty cheap vehicles. However, by the time they had dealt with those vehicles, they became very good, efficient and fast road vehicles. The boys spent hours on their £500, if they could afford it, or £300, Ford V8, which is what it cost in those days. In those days a boy was really someone if he had a twin-spinner Ford. He was the ants pants if he had a twin spinner.

These boys had 1936 Ford V8s. I was fascinated to hear tonight that these hoons are driving \$50 000 vehicles. I do not know whom members associate with, but the group of young people who I know are very happy if they can afford a \$1 000 vehicle. If they have a \$10 000 vehicle, it is only because their old man is a rich member of Parliament! That is the only way they can get a \$10 000 vehicle. We are told that these hoons are driving these \$50 000 vehicles and are doing burnouts in the car park at Scarborough Beach, and are racing along Leach Highway at three o'clock in the morning and are a danger to everyone else on the road. Anyone who is on the road at three o'clock in the morning would need to explain why he or she is there. As for people in the car park at Scarborough Beach, I do not know that that represents a threat to life and limb on the road. These hoons are doing exactly what the boys of my acquaintance were doing. I suggest that if we went back through the decades, the situation would be exactly the same.

The Government has decided that we need to get tough on these hoons. It intends to get tough on these hoons by giving police officers the power to impound their vehicles if they have a reasonable suspicion that they have been doing burnouts, have been testing their cars against each other or have been trying to break the land speed record. I would like to see someone break the land speed record in a \$50 000 car! This Bill is the Government's attempt to get tough on hoons.

Hon Jim Scott: The bell will be tolling for them!

Hon DERRICK TOMLINSON: The bell will be tolling, yes! I can hear it now! The bell will be tolling for these young people! It is interesting that the Government wants to get tough on these young people who drive their cars in this way. How is it going to get tough? We are told in the Bill that if these young people are found guilty of an impounding offence (driving), and it is their third such offence, then their vehicle will be impounded. That is, if they are found guilty of a motor vehicle offence - that is, there is a reasonable suspicion that they have been racing their vehicle - then their vehicle may be impounded. If, on a reasonable suspicion, the police officer can establish that it is the third offence - in other words the person has already had two impounding offences (driving), so that he has done these things before twice - the person's vehicle will be impounded. The vehicle would be returned if it had been stolen. That is fair enough; I accept that. However, a senior police officer may not be satisfied that there are reasonable grounds. The car has gone, and the police officer may say, "Righto, young man, I think you've been racing your car. You've lost your car" or "Righto, young man, you've been doing burnouts, and you've done burnouts twice before. I'm taking your car." Then and only then may the senior officer intervene and say, "I don't think your suspicion is a reasonable one." On second thoughts, the young person will get his or her car back. However, it may be returned or released from impoundment if the senior officer is satisfied that unless the vehicle is released, exceptional hardship will be suffered. I am not quite sure what exceptional hardship means, and I will take that up at the committee stage. What does exceptional hardship mean? Will exceptional hardship be judged in the same way that it would be judged in a suspension of driving licence case, and a person can apply for a provisional licence because hardship is demonstrated? Is that what it means? I do not know. I will take up that matter.

If the vehicle is not released under any of those three circumstances, the matter can go one stage further, and a court may confiscate the vehicle if it is a third offence. Therefore, it is only on a third impounding offence (driving) that impoundment occurs, and it is only on a third offence in the court that confiscation occurs.

Hon Jim Scott: I wonder whether it has to be the same vehicle for the same driver.

Hon DERRICK TOMLINSON: I wonder; and it is over five years. I listened carefully to Hon Peter Foss. I do not agree entirely with some of his remarks about the Police Service, because, quite frankly, I believe that the bulk of our police officers are genuine in upholding the law.

Hon Peter Foss: The bulk of them?

Hon DERRICK TOMLINSON: Yes, the bulk of them. I would say at least 97 per cent of them are genuine.

Hon Peter Foss: I agree with that percentage.

Hon DERRICK TOMLINSON: It is that rogue three per cent who we are told may have intimidated young people at the University of Notre Dame Australia on Friday night. That is yet to be proved, but that is the sort of offence about which we are talking. Some of that three per cent are a vindictive lot. They will make sure that the person is caught for the third offence. They will get him on Friday night this week, on Friday night next week and on Friday night the week after. They will set him up so that they can maximise the penalty and confiscate his vehicle. As Hon Peter Foss said, they run them in, and we are dealing with 17, 18 and 19-year-old kids.

Hon Robyn McSweeney: That is right; they are kids.

Hon DERRICK TOMLINSON: They are kids. However, it is the third offence. Come on; let us be reasonable. I believe the second reading speech refers to getting tough on these people. This is the Government's get-tough-on-crime measure. I have been in this place long enough to remember lots of get-tough-on-crime measures. I remember the Crime (Serious and Repeat Offenders) Sentencing Act.

Hon Jim Scott: You made that up.

Hon DERRICK TOMLINSON: No, we did not make it up. It came from the other side. It came from a Christmas barbecue. What were members opposite going to do? Parliament was recalled as a result of that Christmas barbecue to deal with the Crime (Serious and Repeat Offenders) Sentencing Act. That Act dealt with this category of people, and stated that they would be put in prison for an indefinite term. That was in the Crime (Serious and Repeat Offenders) Sentencing Act. How many of those people were ever incarcerated? One. That was the get-tough-on-crime measure then. That was the Labor Party's barbecue response to a tragic accident on Christmas Eve.

Hon Jim Scott: It was probably only a slip of the tongue about cleaning the barbecue.

Hon DERRICK TOMLINSON: I do not know whether they were cleaning the barbecue with their tongues, but that was the result. We now have this measure to get tough on crime, tough on young people, tough on young offenders and tough on the hooners with the \$50 000 vehicles. However, the Government will be tough only the third time around. The vehicle will be impounded only the third time around. The court will confiscate the vehicle the third time around. The same party, when in opposition, screamed hard and long about the "three times and you're in" penalty for home invasion. Now the same Government that wants to be seen as tough on crime has looked at the Road Traffic Act and said, "How can we be tough on young people? We'll be tough on young people with this three strikes and you lose your vehicle offence." It will not happen. It is the stuff of nonsense.

However, let us consider the Government's proposal. It is proposing not to confiscate the profits of crime -

The DEPUTY PRESIDENT (Hon Simon O'Brien): Order! I remind Hon Jim Scott that it is against the standing orders of the House to pass between the member speaking and the Chair. I am sure it was an oversight on his part.

Hon DERRICK TOMLINSON: I am sure that it did not impede the projection, but you are perfectly correct, Mr Deputy President.

We are not talking about the confiscation of the proceeds of crime or the confiscation of the profits of crime. Even in the confiscation of the profits of crime, the person involved must be declared by the court to be a drug trafficker - unless the law has been changed since it passed through this House. The offender must be declared by the court to be a drug trafficker - not somebody who has traded in drugs and been convicted once or twice, but a person who the court has decided is not simply a drug dealer, but a drug trafficker - in which case the court empowers the confiscation of the assets of that person, unless that person can demonstrate to the satisfaction of the court that they are not the proceeds of crime.

I go to the more recent confiscation legislation. I am told that the confiscation of profits is probably the most effective way of dealing with some crimes. Why do people commit crimes? They commit crimes for all sorts of reasons, but if they are related to such things as selling drugs, they want to make a maximum profit in minimum time through unlawful employment. The most effective way to discourage them is to threaten them with the confiscation of profits. However, that is the confiscation of profits of crime. How does that differ from what we are doing in this Bill? We are saying to these young hoons that we will take away from them their vehicle. Is their vehicle a profit of crime? My observation of these young people is that they scrimp and save for their first car from the time they get their very first pay packet. They get their P plates and they start behaving like Jack Brabham. However, they are driving vehicles which they have scrimped and saved for or which, if their parents could afford it, mum and dad have bought them as a reward for matriculation or perhaps graduation from a university. It has nothing to do with the offence. Instead of saying let the punishment fit the crime, we are saying that we will punish these people by taking away from them that which they value most. It is superficially attractive but, I think, indefensible. If we want to punish people for a driving offence, certainly deny them the right to drive, take away their driver's licence or take away their driver's licence for as long a time as we want after a third offence, just as people who commit a third offence of drink-driving lose their licence for life. Certainly we can take away from those people that thing that they do that led to the offence. That is the way to make the punishment fit the crime. If we wish, we could impose on them a financial penalty, and as strict a penalty as we like, make them do community service or incarcerate them. They are legitimate penalties. I cannot countenance this notion of confiscating something that a person has that is not the crime. I find the notion of confiscation for this reason untenable. I cannot accept it for two reasons. I have no confidence in this piece of legislation. I think it relies upon an untenable principle of punishment - confiscation of something that the offender values. To me that is untenable.

Another reason I am uncomfortable with this Bill is that I think it is stuff and nonsense. It is a Government going into an election, wanting to be seen to be tough on crime. How can it be tough on crime? Three strikes worked for the previous Government so let it try that. It does not matter that it opposed it before, it will use it now, and against the most defenceless group - young people. I do not believe we will ever see the confiscation of a vehicle, because the judges will not support this untenable penalty. I have some reservations about the Bill, and I have expressed my reservations about the Bill. I will be interested to hear the Government's response to the Bill when we discuss it in detail at the committee stage.

Debate adjourned, on motion by Hon Nick Griffiths (Minister for Housing and Works).

## **BUILDING AND CONSTRUCTION INDUSTRY TRAINING FUND AND LEVY COLLECTION AMENDMENT BILL 2003**

### *Second Reading*

Resumed from 13 May.

**HON GRAHAM GIFFARD** (North Metropolitan - Parliamentary Secretary) [8.16 pm]: On the last occasion that we dealt with this Bill, I was winding up my comments. I want to say a couple more things. When last we debated this Bill, I was addressing some of the issues raised by Hon Norman Moore when he spoke to the Bill. He and a number of other speakers raised the general question of the success of the levy, the fund and the board over the term of its existence. I think it is generally agreed that it is one of those difficult things to measure. We can see that training in the building industry has outperformed that in other industries in the addition of trained personnel into the industry. I think there is a very powerful argument to say that that is a consequence of the fund's existence. However, actually measuring that is difficult.

The ministerial review of the Building and Construction Industry Training Fund and Levy Collection Act, chaired by Hon Norm Marlborough in July 2002, about which a number of members spoke, touched on some of the indicators of the success of rates of training in industry. I will refer to just two indicators. At page 20 of the review it is stated -

In analysing apprenticeships, the number of apprentice commencements and completions in the year prior to the establishment of the levy (1990/1991) was compared to the number of commencements and completions