ROAD TRAFFIC (MISCELLANEOUS AMENDMENTS) BILL 2012

Third Reading

MRS L.M. HARVEY (Scarborough — Minister for Police) [2.51 pm]: I move —

That the bill be now read a third time.

MR J.R. QUIGLEY (Mindarie) [2.52 pm]: I shall not take long in my speech on the third reading debate on the Road Traffic (Miscellaneous Amendments) Bill 2012, other than to refer to that aspect of the bill that is a complete betrayal of working police officers, and especially pursuit and emergency drivers in Western Australia. The minister confirmed both in this chamber and on radio 6PR this morning that she has in fact thrown upon police officers an onus to prove their defence. In fact on radio this morning she said that I had been disingenuous in my public comments because the bill that was introduced does not require police to prove their innocence beyond a reasonable doubt. I never said that, and a check of *Hansard* and the people in the press gallery will show that I never said that. What I did say was that for the first time ever in Western Australia a police officer defending himself or herself on a charge of dangerous driving causing death, dangerous driving causing bodily harm, reckless driving or dangerous driving will have the onus of proof put upon them by the words in clause 11 of the bill, which will be new section 61A of the Road Traffic Act. It states —

It is a defence to a prosecution for an offence against —

It names the sections —

if the accused satisfies the court that, at the time of the alleged … offence —

It then sets out the three things with which the accused—that is, the officer who in the course of his urgent duty driving had the crash—must satisfy the court.

Mr C.C. Porter: How is that any different from the defence of emergency or duress?

Mr J.R. QUIGLEY: I am sorry?

Mr C.C. Porter: How is that any different from any person, police officer or otherwise, raising a defence such as emergency or duress?

Mr J.R. QUIGLEY: The former Attorney General poses the question: how is this any different from what transpired before; that is, urgent duty driving under the code and the Road Traffic Act as it existed before? The prosecution had to negate that element of the offence beyond a reasonable doubt; that is, that it was not safe to proceed through the intersection at the time.

Mr C.C. Porter: That wasn't my question.

Mr J.R. QUIGLEY: The former Attorney General can speak at the third reading stage.

In this clause of the bill the statute requires the officer to satisfy the court of three particular aspects. It is the officer who must satisfy the court that he was on duty and acting in the course of his duty at the time he was driving. This legislation requires that the officer satisfy the court —

Mrs M.H. Roberts: The former Attorney General has left the room. He doesn't want to hear the answer!

Mr M.P. Whitely: He's done his work! His work here is done!

Mr J.R. QUIGLEY: We will see if he will come to support the minister in her assertion that it does not change the onus of proof. I do not know how, if the former Attorney General —

Mrs M.H. Roberts: I think what he has done is thrown a little bomb in your direction so that you can explain it all and it can explode in the minister's face!

Mr J.R. QUIGLEY: That is right: blow it up in her face and just bat it back across the net. You are quite right, shadow police minister.

The police minister put it properly to Paul Murray on the radio this morning; that is, if the police want to use this defence, they have to show on the balance of probabilities these three things. And that is the very objection that the opposition takes to this legislation. We should not be putting an onus upon the police at any level to prove their innocence. We should not be putting that onus upon these drivers. Let us just think what these police drivers now have to prove on the balance of probabilities. Let us think about the first thing they have to prove if they want to defend themselves on the balance of probabilities, as the minister asserted on radio this morning and in the chamber last night. The first thing that a hapless police officer has to prove is that at the time he was driving he was on official duty as a member of the police force. That might not be hard to prove in either of two ways. The first is by cross-examining the prosecution witnesses that the Commissioner of Police calls—the internal investigators—to get him to concede that or by going into the witness box. Secondly, this police driver

who finds himself unfortunately as the accused person, has to establish, according to the minister—it is right because it is the plain meaning of the legislation—on the balance of probabilities that he or she was acting —

> … substantially in accordance with the Commissioner's policies and guidelines relating to driving, applicable at the time of the driving, and any direction given under such a policy …

Think about it. If the officer is being prosecuted, the Commissioner of Police would have already determined that the accused officer had not acted substantially within his guidelines, which is why he would have charged the officer. The commissioner does not have to prove that beyond a reasonable doubt. The officer has to come along to court, and he or she, carrying the burden of proof, has to satisfy the court that the commissioner was wrong and that he or she was driving substantially within the police operating rules. Why should an accused officer have to carry this burden when no other driver has to carry this burden? When a person is prosecuted for dangerous driving causing death, it is up to the prosecution to prove that the driver was driving in a dangerous or reckless manner. The prosecution may refer to the speed or, as the former minister knows, the intoxication of the driver at the time of the fatality. The police commissioner has to prove that beyond a reasonable doubt. Under this silly police minister's law, when a police officer is charged, if the police officer wants to avail himself of this defence, he or she has to prove the defence. That is what the minister said on radio this morning. If I was the president of the Western Australian Police Union, I would be aghast.

Mr M.J. Cowper: If you were the president of the police union, we would all be aghast.

Mr J.R. QUIGLEY: What a smart comment. The member for Murray–Wellington is a former police officer. He has interjected, so I will pose a question to him, as he was a sergeant. Does he agree that the words "it is a defence to a prosecution for an offence against this section if the accused satisfies the court" put an onus upon the accused person at the time these three exceptions apply? If not, why not? Despite the quick, smart alec interjection by the member for Murray–Wellington, who was a police officer, by his silence he condemns the Minister for Police because he knows that what the government, by its ineptitude, and this minister, by her total ineptitude and her unsuitability to discharge the high office that she has been appointed to by the Premier, have done is reverse the onus of proof on the police. It will not be long before the police get their advice that of course this is correct. I have been saying this for nearly 24 hours now. I notice that the Attorney General for Western Australia, Hon Michael Mischin, has not come out and said it is a wrong interpretation of this legislation to say that any onus has been put on the police. The honourable Attorney General for the state of Western Australia has not come out and said it is incorrect to say that clause 7 reverses the onus of proof and puts it on the police. How could the Attorney General say that, because that is what the words say? In view of the honourable police minister's own admission on the Paul Murray program this morning, that is exactly what the legislation did.

Mr M.J. Cowper: And you're supporting it.

Mr J.R. QUIGLEY: Let us get this right. I am not supporting it; I am not dissenting from it. Why am I not dissenting from it? It is because the police minister sat down with the police and said, "This is what they want. If we don't deliver what they want, they will engage in industrial action that will put Western Australian motorists at risk. That industrial action will be—if we don't pass this law, they won't take part in pursuits. We are not going to be any part of any scene —

Mr F.A. Alban interjected.

Mr J.R. QUIGLEY: I am not taking interjections from the peanut gallery this afternoon. This is far too important an issue to hear from the peanut gallery.

Mr F.A. Alban: Oh, you hurt me.

The DEPUTY SPEAKER: Member for Swan Hills!

Mr J.R. QUIGLEY: I shall assist you, Mr Deputy Speaker, to keep him quiet. I will direct a question to the member for Swan Hills; it is the same question I directed to the member for Murray–Wellington. Does he say that the words in clause 11—"if the accused satisfies the court"—do not put an onus on the accused person?

Mr F.A. Alban: I say, member, that your side has already —

Mr J.R. QUIGLEY: Does the member say yes or no —

Mr F.A. Alban: Every word you say from then on is hypocritical. If you oppose this, you should have stood up and opposed it.

The DEPUTY SPEAKER: Member for Swan Hills!

Mr J.R. QUIGLEY: The member for Swan Hills is just lost for an answer; he cannot answer the question. The member for Murray–Wellington, the former police sergeant, sat mute when the question was asked of him

because he knows that what the Barnett government is doing is an act of betrayal on all pursuit drivers in the police force and all emergency vehicle drivers. For the first time in Western Australia, the police are put in this invidious position of having to prove their defence on the balance of probabilities. It is shameful.

I turn to the next thing that I asked of the police minister yesterday. When there are these high-speed pursuits, there is invariably a public debate on whether it was in the public interest that this or that particular pursuit occurred. It is the government's role and the Commissioner of Police's role, and they do discharge it, and the police minister's role—the member for Hillarys discharged it; I heard him discharge it in this chamber—to establish and assert that when the police were engaged in these pursuits, they were acting in the public interest. I applaud the former minister for making those cases on the occasions they needed to be made. This silly police minister, this inept police minister, is reversing that and relieving the Commissioner of Police of the responsibility of having to establish that a particular chase was in the public interest and throwing that responsibility onto the individual pursuit driver. When that individual pursuit driver is in the dock as the accused, it is up to him to prove on the balance of probabilities that the pursuit was in the public interest. It is outrageous that a government would seek to throw this heavy burden on an individual police officer.

Labor generally supports the propositions that when our police are out on the road exercising their authority and discharging their duty to the community—this is the Barnett government's and the opposition's expectation—they will intercept and stop criminals on our road who drive in a criminal fashion and injure people, as occurred with the accident at the airport the other day involving the scientist who was hit 20 minutes after he arrived in Australia. We expect the police, we want the police and we support the police in their endeavours to apprehend those drivers. We never imagined in a million years that there would be any government so stupid as to burden those drivers with the onus of having to establish their own innocence on the balance of probabilities. It is not unexpected that the union has not come out today because it will have been taking advice from its lawyers. This would not have happened if this had not all been done in a rush. The minister on the radio this morning said that the opposition has had this legislation for a week. The government, which has been preparing this legislation for six months, gave it to the opposition on Wednesday evening of the week before last, the day before this Parliament got up and we all went our different ways. A week before that, it was signed off by the police union and the police department. The member for Swan Hills asks why I am not going to vote against it. I have spoken loudly and consistently, and I hope clearly, against the proposition that the Barnett government is embarking upon, of throwing an onus upon the police for the first time in Western Australia of proving their defence on the balance of probabilities. This, in colloquial language, is a stuff-up, and the police should never have been put in the position that the Barnett government is putting them in today—ever! But we will not vote against it because apparently, we are told by the government, this is what the police want. If this is what the police want and the police are insisting on it, far be it for me to dissent. Had I been the legal adviser to the police union, as I was for more than a quarter of a century, I would have said, "Hotfoot it up to Parliament House now and make sure that they change the wording of this so they don't prejudice police so that there is not a bias in this legislation against police." As I say, hoons do not have to establish their innocence beyond reasonable doubt, and the criminals who drive on our roads do not have to establish their innocence on the balance of probabilities; it is only the police who are put in this position. It is a tragedy and a catastrophe!

Mrs L.M. Harvey: But hoons aren't being given a defence.

Mr J.R. QUIGLEY: Yes, minister, would you like to repeat what you said on Paul Murray this morning?

Mrs L.M. Harvey: The hoons aren't being given a defence; the police officers are being given a defence.

Mr J.R. QUIGLEY: We know that; we know that; we know that! I am saying that when the hoons defend themselves on a charge of dangerous driving causing death, the hoons are not given the extra burden of proving their innocence on the balance of probabilities. It is up to the prosecution to prove their guilt beyond a reasonable doubt, whereas in this defence the government is giving to police, it is saying, "We'll give you this defence, police, but you must prove this defence on the balance of probabilities." I know that that might be a bit too complex for the minister, but I am sure any magistrate —

Mr C.J. Barnett: How patronising!

Mr J.R. QUIGLEY: I am sure that any magistrate will put their head around that in the first two or three minutes of legal submissions.

Mr C.J. Barnett: We'll report you to Julia Gillard!

Mr J.R. QUIGLEY: What is that, Premier?

Mr C.J. Barnett: I just said you were patronising.

Mr J.R. QUIGLEY: How is it patronising to identify —

Several members interjected.

Mr J.R. QUIGLEY: How is it incompetent to identify —

Several members interjected.

The DEPUTY SPEAKER: Members!

Mr J.R. QUIGLEY: I understand the Premier's proposition to be this: "Yes, you can say that the minister is incompetent but because she is female, you're a misogynist if you identify her incompetency." That is hiding behind an apron! That is fatuous thinking. What is the test as to whether the minister is on top of her job? She offers the police a defence, and then says, "It's up to you police officers to prove your defence on the balance of probabilities." The police union, once it has woken up to this, should be rightly outraged. If the union is a bit embarrassed because it did not pick that up in its negotiations with the government, the union and the government at least have the obligation to go out there and tell all police officers loudly and clearly, "The Minister for Police has just changed the rules on you, boys and girls. They've just moved the goalposts." The new Minister for Police says, "If you're going to run a defence, you must prove your innocence and you must prove it on the balance of probabilities." We say that is a disgraceful and despicable thing to do to police officers. We cannot wait to hear —

Mr M.J. Cowper: Ha!

Mr J.R. QUIGLEY: The member for Murray–Wellington is now laughing, but I take it, given the fact that he did not rebut what I said before, his laughter was one of agreement. He nods; let *Hansard* note that he nods as he got up from his chair.

Anyone who reads this legislation knows, as the minister already said in the chamber last night, yes, those words require the police to prove those three elements of their defence, but, yes, they only have to prove it on the balance of probabilities. This is throwing, as I said, a burden on the police. Even in the most celebrated murder trial that Perth has ever seen and the acquittal of Mr Rayney last week, there was no obligation on Mr Rayney to establish any element of his innocence—none! He did not even give evidence, because the prosecution had to prove his guilt beyond a reasonable doubt and it failed to do so. But in this place, the Minister for Police has introduced a special and new rule against police that, unlike in a murder trial—as I just cited in Mr Rayney's case, in which he did not have to prove anything; the police had to prove him guilty beyond a reasonable doubt and was unable to do so—in this case is biased and prejudiced against the police. The minister has to say in her third reading speech why the government has done this to police. Why has the government made the police a special category? Why has the government put an onus on police, which it has not put on hoons or any other driver, to prove their innocence? This is an act of betrayal of all police, emergency and urgent duty drivers. It is an act of betrayal that was brought about by the utter incompetence and ineptitude of the Minister for Police.

MRS M.H. ROBERTS (Midland) [3.15 pm]: I am very pleased that the member for Mindarie—I believe he must leave the chamber as he has some guests waiting—was able to very fully outline his concerns about clause 11 of the Road Traffic (Miscellaneous Amendments) Bill 2012, which inserts new section 61A.

This bill has been exceptionally badly handled by the government. This has been an ongoing, festering issue for the best part of the year. A particular crash in Morley occurred earlier in the year, after which the Western Australian Police Union called for some strong action. The government said that it would draft legislation to support police officers in urgent duty driving and, more specifically, pursuit driving to offer police officers greater protections. What then ensued was that the June conference of the police union came around, and police union members wanted to move a motion to call upon the government to bring the legislation in and to ban all urgent duty driving. They then gave the government a deadline of 1 October to get the legislation through. That is how I recall the motion. I think that informally the discussion was around the view that if the union could see the legislation and that the government had made some good progress, there would be no need to proceed with the urgent duty driving ban on 1 October. Sensible heads on the police union board no doubt understand that Parliament goes through a due process and needs time to consider legislation.

In the normal course of events, legislation should lie on the table of this house for three weeks. That is in our standing orders, and it is a very good principle because during that three-week period there is the opportunity for not only the opposition spokesperson and key interested people in the opposition to take advice, but also Independent members to take advice. Also, it gives other interested parties and affected parties in the community a chance to communicate any concerns that they may have to the opposition or, indeed, to the government. A sensible government will always take heed of those concerns. If members of the community or people representing various interests present sensible options for amendments, a good minister and government will take those suggestions forward. All along we have offered to have a bipartisan approach with the government. We asked whether we could see the draft legislation, but that was not provided to us. I note, though, that although the minister chose to treat the opposition with contempt and not take a bipartisan approach with us, she

did provide the legislation, after it had been to cabinet, to the police union, a week before she brought it into this house. Therefore, the minister did collaborate with the police union and presented it with the draft bill. The minister had an indication from the union that it was supportive of the legislation before she brought this bill into the house; indeed, this was before she showed the bill to the opposition. I would have thought that supporting our police officers is something that every member in this house wants to do, so I do not see what the big secret was. I do not see why the Minister for Police and this government chose to play politics with this issue. If it was not playing politics with it, the government could have shown us a draft, at least at the same time that it was shown to the police union. But this minister has not just shown contempt for this Parliament, she also does not have any understandings of its processes and procedures. We note that all the time in the various utterances that she makes.

I understand that only this morning the Minister for Police said that staying here last night to debate this bill and other matters was somehow "a waste of oxygen". I am sorry that the minister thinks that considering the detail of this bill, which is what we did last night, was a waste of oxygen. I think members made pretty sensible contributions. The only real concern out of last night was this minister's incapacity to answer the questions put to her on the various clauses. Indeed, on the last couple of clauses we did not bother asking any questions because, frankly, we were sick of having either non-answers or sections of the explanatory memorandum read out to us, or, alternatively, an offer to halt proceedings while the opposition could have a briefing. After today, there are only four more sitting days. This government has left it to the dying days of its term in office to bring this legislation forward. It is rushed legislation. Some in the community will ask the question: why would the opposition support it? I note that the opposition leader made one very clear point today: this legislation will pass this house on the numbers whether or not the opposition supports it.

I want to draw the Minister for Police's attention to proposed section 61A, which is the section that the member for Mindarie and shadow Attorney General drew her attention to. I am guessing that we will not get much of an answer again in the third reading and we will have some assertions. The minister's response last night was very much to the effect that she actually believes that proposed section 61A will enhance protections for police officers and will provide them with better opportunities to defend themselves. I do not have any quarrel with that. I understand that the minister really believes that this will be to the benefit of police officers. That is why she has put it forward. But it seems to me that her mind is very closed because she can believe something as much as she likes—I made this point last night—but it does not necessarily make it true. Just because she believes that something might help police officers does not mean that it necessarily will help police officers. I look forward to the minister answering the member for Mindarie's questions.

I want to go through proposed section 61A very carefully and put some further aspects to the minister. Proposed section 61A is headed "Reckless or dangerous driving—defence for police officers in certain circumstances". It states —

> (1) It is a defence to a prosecution for an offence against section 59(1)(b), 59A(1)(b), 60(1) or 61(1) if the accused —

The accused in this circumstance will be a police officer —

> satisfies the court that, at the time of the alleged commission of the offence —
>
> (a) the accused was on official duty as a member of the Police Force —

I just note there that I think the two words "the accused" are actually superfluous because "the accused" is in the first paragraph and is not repeated in proposed paragraphs (b) and (c). To have some consistency, we should delete the words "the accused" from there or insert "the accused" under (b) and (c). I just make that as more of a grammatical point than anything else. I repeat —

> … if the accused satisfies the court that, at the time of the alleged commission of the offence —
>
> (a) the accused was on official duty as a member of the Police Force; and —

That is clear. I do not think there is any debate about that. There is the conjunctive "and"—not "or". It continues —

> (b) the driving was substantially in accordance with the Commissioner's policies and guidelines relating to driving, applicable at the time of the driving, and any direction given under such a policy or guideline; and

Again, there is the conjunctive "and". A police officer has to meet another criterion. It continues —

> (c) having regard to all of the circumstances of the case, it was reasonable, and in the public interest, for the accused to have driven the motor vehicle in the manner that he or she did.

I want to make a number of points about this. Firstly, the Minister for Police failed to give any explanation about what would or would not be in the public interest or how that would be defined or tested. Secondly, the minister has refused to provide the Commissioner of Police's guidelines relating to urgent duty driving, including pursuit driving. We do not have that information. We do not have any clarity on that in making this judgement. The key point I want to make is that a police officer has to meet all the criteria—not any one of those criteria, but all three. Meeting the first one is easy, but a police officer then has to meet the criteria of "substantially in accordance with the Commissioner's policies and guidelines relating to driving, applicable at the time of the driving, and any direction given under such a policy" and also "having regard to all of the circumstances of the case, it was reasonable, and in the public interest, for the accused to have driven the motor vehicle in the manner that he or she did".

If an officer did something that met all the conditions in proposed paragraph (c)—"having regard to all of the circumstances of the case, it was reasonable, and in the public interest, for the accused to have driven the motor vehicle in the manner that he or she did"—that is, if the police officer could satisfy the court that it was reasonable and in the public interest to have driven the motor vehicle in the manner that he or she did, that would not be sufficient. Even if the accused can prove it was in the public interest and it was reasonable, that is not enough; that is not a defence. For it just to be "in the public interest" and for it just to be "reasonable" is not a defence under this proposed section. In the public interest and reasonable is not good enough. The police officer also has to meet the criterion of (b) —

> the driving was substantially in accordance with the Commissioner's policies and guidelines relating to driving, applicable at the time of the driving, and any direction given under such a policy or guideline …

It could be reasonable and it could be in the public interest, but that would be no defence under this law.

Of course the reverse applies. Let us say, for the sake of the argument, that the police officer met all the criterion of (b); namely, that the driving was substantially in accordance with the commissioner's policies and guidelines relating to driving, applicable at the time of the driving, and any direction given under such a policy or guideline. In fact let us go even further than that. Let us assume that the police officer's driving was not just substantially in accordance with the commissioner's policies and guidelines; it was 100 per cent in accord with the commissioner's policies and guidelines. The police officer is 100 per cent in accord with the commissioner's policies and guidelines and he is 100 per cent in accord with any direction that he is given, at the time of driving. They have met all of the commissioner's guidelines, they have met all of the Commissioner of Police's policies and procedures and they have obeyed to the letter of the law, 100 per cent, any directions that they have been given. However, if they cannot demonstrate to the court that their actions were reasonable in the public interest, it seems that they are left out to dry, because they have to meet both criteria. How unfortunate would that be! What an invidious position for a police officer to be in.

I am a former English teacher; I am not a lawyer like Mr Quigley, but I have debated a lot of legislation in this house over the past 18 years and I have a pretty good grasp of English. I know that there is a difference between the words "or" and "and", and where we have the word "and" we have to meet both sets of criteria. The member for Mindarie alluded to this fact briefly in his comments during the second reading debate yesterday, but it is a very, very important point—that a person must meet both sets of criteria. A police officer could do something that is entirely reasonable and 100 per cent in the public interest, but if it is not substantially in accordance with the commissioner's guidelines and policies or if it is not substantially in accordance with the direction given to him, despite it being in the public interest and being reasonable, that will not be a defence. Conversely, if an officer follows the commissioner's guidelines and policies and any directions given to him 100 per cent, if the officer cannot satisfy the court—these are the words used in this clause—that what the officer did was reasonable and in the public interest, the officer will be on his own; he or she will not have a defence under this clause. That is how it reads to me. It is not sufficient for the minister to respond at the third reading stage and say simple things like, "You are wrong. That is not the case. I really believe that this is much better and this is what I really believe will better protect police officers, and I really believe that this will provide them with a better defence than what currently exists." We need a response to the points raised by the member for Mindarie and me on proposed section 61A.

The further point has been made that we did not perhaps delete these provisions and that we have not indicated that we will vote against the bill and show our disdain for the whole process. No, we will not, and I will tell members why. Perhaps if we had more time, we would give that consideration, but there are only four sitting days remaining for this house. We will not be accused of obstructing legislation that is designed to support

police. We will not be part of some spit-spat in which the minister says "is" and the member for Mindarie says "isn't", and in which the minister says that she is right and the member for Mindarie, with 25 years' experience defending police officers, says he is right.

Mr M.J. Cowper interjected.

Mrs M.H. ROBERTS: The member for Murray–Wellington can have a little scoff about the member for Mindarie if he likes, but one thing that stands true is that the member for Mindarie had an exceptionally high success rate as a defence lawyer. There is no way that the Western Australian Police Union would have used him for 27 years if he was not successful. If he was not any good, it would have got rid of him after six months, three years, five years, 10 years or 20 years, but it did not because he knew his job and he did it well. He may have done or said things that have upset police officers in recent years, but nothing can take away from his record of successfully defending police officers in court. It would be beyond reason for the police union to continue to engage him each and every year over that period if he was not good at his job. I will not countenance any criticism on that front or any suggestion that the member for Mindarie is not a competent defence lawyer or does not know what he is talking about when it comes to these matters.

I will outline what I expect will happen today. The government has chosen not to take a breather and get some alternative advice or wait until the union provides its advice and then bring this bill on tomorrow or next week; the government has called forward the third reading of this bill today. On that basis, we will support it today and we will see this bill progressed to the upper house. This does not mean that consideration of this legislation is over. It will be considered in the other house. Perhaps the minister may decide that some amendments are in order, or perhaps when the Attorney General in the other place has a look at this debate and reads the comments of the member for Mindarie, he might come up with an amendment that might strengthen the bill's position.

Everyone in this house says that police do difficult and dangerous work; they must make split-second decisions and they deserve to be protected when they are engaged in urgent duty driving. To suggest or to have some spit-spat argument about who supports them most—one side does or one side does not—is just juvenile and childish. We started this process by saying, "Let's have a bipartisan approach. Share your draft legislation with us and let's get this right on behalf of all police officers." That approach was knocked back by the government. The government has the numbers in this place. The government has brought this bill before the house on such a narrow timetable; we now have only four days remaining for the Assembly to sit. We will not jeopardise any opportunity for better protection for police officers, and we will support this bill going through at its third reading today. However, I certainly intend to have further discussions with the police union specifically about this clause, and if the member for Mindarie is right, and if the police union believes that the government has let it down in this bill's drafting and that changes are required, I will certainly support those changes.

MRS L.M. HARVEY (Scarborough — Minister for Police) [3.37 pm] — in reply: I rise in the third reading debate of the Road Traffic (Miscellaneous Amendments) Bill 2012 to address a number of comments and also to thank members for their contributions to debate on this very important legislation.

I will make some points in response to the member for Mindarie's comments. The defence that we are providing to police officers in these circumstances—the defence to reckless driving and dangerous driving—is a defence that is new; it is an additional protection that we are affording to our police officers. The defence does not in any way take away from defences already available to police officers. It is an additional defence. It does not prevent police from relying on other forms of defences or putting it to the prosecution to prove in relation to, for example, the presence of an emergency or any other tactical options open to any persons facing charges of any kind. When police engage in emergency driving and an adverse outcome ensues, the police internal investigations affairs unit goes through the elements of the emergency driving collision. There is an assessment at each point along the way to determine whether the officer engaged in the driving was driving in accordance with the commissioner's policies and guidelines. An assessment is made of whether the steps that the officer took during the course of that pursuit were reasonable, and whether the elements of the commissioner's policies and guidelines related to emergency driving had been adhered to; that is, that the driving was in the public interest and that the pursuit of the offender was indeed in the public interest.

At the end of that internal affairs investigation, if it is deemed that the officer may be subject to reckless driving or dangerous driving charges, those charges are laid against the officer, and the officer then needs to take those charges through to court, and it is up to the prosecution and the state, as they do in all matters that go to a court, to prove beyond reasonable doubt that the officer was indeed guilty of those offences, and a conviction is made as either a guilty verdict or a not guilty verdict.

What this defence effectively does is that if the elements of the defence become apparent during the course of the investigation of the pursuit, police internal investigations, in consideration of the specific elements of the defence, will guide the decision about whether there is a prima facie case to bring charges against a police officer under the Road Traffic Act.

Mr J.R. Quigley: Total agreement so far.

Mrs L.M. HARVEY: So effectively what this will do is that if the elements of the defence are available, charges will not be brought against the police officer, and he or she will not then have to go to court to have those charges heard. So in this defence, which is a balance of probabilities test, if the officer was substantially complying and in accordance with the commissioner's policies and guidelines, and if the other elements of the defence are present, the officer will avoid going to court. The officer will be able to get back on the road and get back to work, and the officer will not have their employment suspended while they go through a court process to have the court determine whether the charges against them should be preferred into a conviction.

Mr J.R. Quigley: What if internal affairs says the elements are not there and the officer says yes, they are? Who determines that?

Mrs L.M. HARVEY: The member for Mindarie needs to get clear on what he is saying about this, because I wrote down what he said last night. He said that we have now made it so that should someone be charged by the police department or by their superiors in internal affairs with a dangerous driving causing death offence, there will be a burden of proof on them to establish the three elements of the defence beyond a reasonable doubt.

Mr J.R. Quigley: I never said beyond a reasonable doubt. I said on the balance of probabilities.

Mrs L.M. HARVEY: The member for Mindarie said beyond a reasonable doubt last night. I wrote it down, and that is what he said; and that is why I said he is wrong.

Mr J.R. Quigley: I said on the balance of probabilities.

Mrs L.M. HARVEY: The member can check *Hansard* tomorrow.

Mr J.R. Quigley: I said on the balance of probabilities.

Mrs L.M. HARVEY: The member can check *Hansard*. That is what he said.

Mr J.R. Quigley: I have it here. I will read it back to you.

The DEPUTY SPEAKER (Mr M.W. Sutherland): Member for Mindarie! Move on, minister, please.

Mrs L.M. HARVEY: To go back to the elements of the defence, if a matter goes to court and an accused officer wishes to rely on this defence, with reference to the guidelines and policies that exist, the officer will have to raise the defence on the balance of probabilities. The officer will not, as the member claimed at various points last night, have to show that the defence exists beyond a reasonable doubt. This is not at all strange or out of the ordinary.

Mr J.R. Quigley: At page 8 of last night's transcript I said on the balance of probabilities.

Mrs L.M. HARVEY: It is the same as most offences in the Road Traffic Act.

Mr J.R. Quigley: You are wrong.

The DEPUTY SPEAKER: Member for Mindarie!

Mrs L.M. HARVEY: For example, section 49(2)(b) of the Road Traffic Act makes it a defence to a charge of driving without a licence for any person to prove that they were authorised to drive without a licence. Section 67 of the Road Traffic Act makes it a defence to a charge of refusing a blood test or driving under the influence if a person satisfies a court that there is a good reason why they refused such a test. The reason for that is that police officers are always better placed to know the reasons why they did what they did. So what will happen is that when an accident occurs, police will be required to conduct an internal investigation, as I said previously. One of the things that that internal investigation always covers is whether the relevant guidelines and policies were followed. Unless WA Police form the view that there is absolutely no doubt that there has been a very serious breach of any relevant guidelines and policies, so that they were not substantially complied with, the matter will end there and no charges will be laid, because there will be no reasonable prospect of a conviction.

Several members interjected.

Mrs L.M. HARVEY: In other words, it is a defence that has been designed to stop matters going to court at all.

Mrs M.H. Roberts: What about the public interest test?

Mrs L.M. HARVEY: I am clarifying it for members. Members should perhaps listen to what I am saying. If the matter does go to court, the reason this defence provides an additional protection is that it is intentionally more broad than just those situations in which a sudden or extraordinary emergency exists, such as in the existing Criminal Code provisions that the member raised. For example, a vehicle intercept, which is the most common form of police driving, is authorised under the commissioner's guidelines and policies and includes checking speeds of a vehicle or seeking to stop a vehicle. Priority 2 driving is now also covered by this defence. This

involves responses to incidents that are not necessarily life-threatening. Covert driving, which is driving or riding in an unmarked police vehicle where an exemption to the normal statutory traffic requirements is necessary, is also not necessarily in response to a sudden or extraordinary emergency. The defence that we are affording police officers under this legislation covers a much broader range of police emergency driving and is a defence that was not available to them prior to this bill. In all these situations, officers at the moment have no protection if they are facing charges of dangerous driving causing death or bodily harm, or non–speed related reckless driving. If something catastrophic happens when they are carrying out one of those tasks, they have no protection. The government's bill will for the first time give them that protection.

This is the advice that the government has received, and the substance of what I have discussed with the police union so far. If the union has any further concerns, I am happy to discuss this matter with it. What this legislation also does in passing is substantially increase the penalties for those who seek to evade police, those who seek to flee police in any circumstances and those who end up being charged with driving recklessly or dangerously while fleeing police.

Point of Order

Mr J.R. QUIGLEY: Mr Deputy Speaker, I have been seriously misrepresented. I have checked the *Hansard*, and time and again I see the words "on the balance of probabilities." I have been empirically misrepresented by the minister. I said "on the balance of probabilities."

The DEPUTY SPEAKER: Sit down, member for Mindarie. That is not a point of order. Carry on, minister.

Debate Resumed

Mrs L.M. HARVEY: Thank you, Mr Deputy Speaker.

The other aspect of this legislation—this is one of the reasons that I am very pleased that we have had support for this legislation—is that it substantially increases the penalties for those people who engage in this incredibly dangerous behaviour. I believe that we have got it about right. I think that this legislation provides the right kind of balance. I believe that the defence strikes an appropriate and transparent balance between protecting police officers who are involved in pursuits as part of their duties and also requiring that police officers meet public interest expectations about how they conduct themselves in performing their duties. Indeed, I thank members for their support of this legislation. I think this is an important piece of legislation that we have brought forward today. It will protect police officers. It will provide them with the assurances that they need in order to go about their duties, knowing that they have a state government which supports them and is behind them and which will support them when things do not turn out the way that they had intended.

As to Personal Explanation

Mr J.R. QUIGLEY: Mr Deputy Speaker, I seek to make a personal explanation.

The DEPUTY SPEAKER: No; there is no personal explanation.

Mr J.R. QUIGLEY: Mr Deputy Speaker, you have not heard what I have to say! How can you say I do not have a personal explanation? I want to personally explain that I said "on the balance of probabilities" time and again.

The DEPUTY SPEAKER: Sit down, member for Mindarie.

Third Reading Resumed

Question put and passed.

Bill read a third time and transmitted to the Council.