ROAD TRAFFIC (MISCELLANEOUS AMENDMENTS) BILL 2012

Declaration as Urgent

MRS L.M. HARVEY (Scarborough — Minister for Police) [3.04 pm]: In accordance with standing order 168(2), I move —

That the Road Traffic (Miscellaneous Amendments) Bill 2012 be considered an urgent bill.

MRS M.H. ROBERTS (Midland) [3.05 pm]: The opposition will support this becoming an urgent bill, despite the fact that the police minister has not spoken to me as the opposition spokesperson at all about this matter. But in the interests of police officers, we will acknowledge that this bill is important and that we should bring it on and deal with it today. This, again, is despite the fact that the government has introduced this legislation so late in its four-year term. The government, having said in June at the Western Australian Police Union conference that this legislation would be a priority for this session, has brought it on with insufficient time for it to be dealt with under the standing orders of this house, and now we have to use the standing orders to declare it an urgent bill so that it can progress through all stages. This is not good management by the government. However, because of the importance of the issue, we will support the motion.

Question put and passed.

Second Reading

Resumed from 24 October.

MRS M.H. ROBERTS (Midland) [3.06 pm]: The Road Traffic (Miscellaneous Amendments) Bill 2012 deals principally with two things. The first is to provide protections for police officers who are engaged in urgent duty driving. The second is a reconsideration of penalties for those who choose to breach the Road Traffic Act. With respect to the first of those two matters, the opposition has been calling upon the government to bring forward legislation to better protect police officers for quite some time—indeed, well prior to the police union conference in June, at which the matter certainly came to a head, and at which there was motion on the books to immediately ban all urgent duty driving, given the government's lack of action in protecting police officers at that time. It was agreed at that conference that a deadline of, I think, 1 October be set for the legislation to progress through the Parliament. However, what we found was that as that date approached, we still had not even seen any legislation from the government. We were presented with this legislation only in the last week of the Parliament sitting.

The minister said in her second reading speech that since 2009, the number of recorded incidents of people evading police pursuit had more than doubled. She said also that in 2011–12, there were 327 such pursuits. So I can assume only that there were fewer than 160 pursuits back in 2009. That is a massive increase in just two years. It is no wonder this matter has become so urgent for police officers. The fact of the matter is that some protections are already in place for police officers who are engaged in urgent duty driving. However, this legislation will clarify things and give police a better defence for certain actions that are outlined in the bill. Those things are outlined in the minister's speech and also in the explanatory memorandum.

If I can turn to the explanatory memorandum, the explanatory memorandum is the part of the bill that the opposition absolutely fully supports and has been calling on the government for months to introduce with some urgency. There is reference on page 10 of the explanatory memorandum to proposed section 61A being inserted into the Road Traffic Act 1974. The relevant part of the explanatory memorandum reads, in part —

> New section 61A will provide members of the Police Force with a defence to a prosecution for an offence of:
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> - dangerous driving causing death or grievous bodily harm (section 59(1)(b)); or
> - dangerous driving causing bodily harm (section 59A(1)(b)); or
> - reckless driving (section 60(1)); or
> - dangerous driving (section 61),
>
> where specified circumstances apply.
>
> While these are very serious offences, there is a community expectation that members of the Police Force will protect the public and an understanding that this may sometimes involve members driving in a manner that carries with it some risk.

Of course, when one drives in a manner that carries with it some risk, there is always the possibility that a tragedy could result.

I want to make it quite clear that the Road Traffic (Miscellaneous Amendments) Bill 2012 is not just about pursuit driving, although, given the media coverage, the public could come to the conclusion that it is only about protecting police engaged in pursuit driving. I know that the police are very keen to be covered for a range of urgent duty driving activities; it is noted in the explanatory memorandum that there could be a range of such emergencies, including fires, hostage situations, armed robberies or blood and organ escorts. Certainly, it is my perception that the community is absolutely fully behind the police having appropriate protections for going about their job of providing protection to the community. The police do not expect that, as a consequence of engaging in urgent duty driving as part of supporting the community and attending to community needs, they will be left vulnerable to prosecution.

There are specified circumstances outlined in the explanatory memorandum that have to be met. At page 11 it reads, in part —

> For these reasons, the Commissioner restricts the circumstances in which officers can engage in certain forms of risky driving, and issues directions in the form of policies and guidelines which ensure the risks attached to this driving can be minimised and a balance is struck between those risks and the public benefit and community expectation that members of the Police Force will provide a proportionate response to prevent crime and respond to emergencies.
>
> The Commissioner mandates the actions members of the Police Force must take and the procedures they must follow before, during and after undertaking these driving duties in these policy documents. Policies issued by the Commissioner usually include requirements relating to speed, the clearances and authorisations that must be obtained from senior police officers, and the risk assessments that must be undertaken.

I have other matters to get to, so I will not read more fully from the explanatory memorandum, but the last paragraph at the bottom of page 11 reads —

> Under proposed paragraph (b), the member of the Police Force will be required to establish that he or she was driving, substantially, in accordance with the Commissioner's policies, guidelines and directions in relation to the driving.

Certainly, some of my colleagues will seek further information on what is publicly available in respect of the commissioner's policies, guidelines and directions. Over the page, the first paragraph on page 12 reads —

> Reference in this paragraph to "substantial" compliance recognises that there may be circumstances in which it is appropriate, or necessary, given the relevant circumstances, for a member of the Police Force to diverge from an aspect of the policies.

I indicate that those are matters that will probably be questioned a little more closely by the opposition during consideration in detail; there is reference to matters that are in the public interest.

From following the community debate and what has been said through various media, be it talkback radio or the letters pages of newspapers, or even from talking to people in the community, I think there is a huge deal of support for police officers. The public well and truly understands that there are many circumstances in which police may have to undertake urgent duty driving and will potentially need to drive faster than the posted speed limit. They may not be in a position to follow the directions at signalised intersections, stop signs or give way signs, and they may in some circumstances have to mount the kerb or drive at speeds substantially in excess of the posted speed limits. They might do any of those things for a variety of reasons, but high-speed pursuits have become the most notorious of such circumstances. I will be interested to find out whether the minister can provide any guidance to the house as to why she believes there has been a doubling of the number of pursuits in which individuals attempt to evade police since 2009. It is always relevant to look at the underlying causes and whether there is some potential to deal with those underlying causes. Again, I will be interested to hear the minister's response on that aspect, and I expect that some of my colleagues may also want to pursue that matter when we get to consideration in detail.

In summary, with regard to the protection of police officers, I think this proposed section is largely uncontroversial. The opposition was not given an early copy of any draft legislation; we have had a look at the bill and we generally take the government at its word that police officers will now be better protected. The opposition received a briefing, and whilst there are some protections already in place, there are also potential situations in which police will not be protected as well as they should because of changes to other legislation,

such as the hoon legislation. But as I said, we take this aspect of the bill at face value and hope that it will do what the government proposes it will do; if it does, the opposition will certainly give this proposed section of the legislation our most fulsome support because we realise that the police do a dangerous and difficult job. They often need to make split-second decisions and if they are doing so substantially in compliance with the commissioner's instructions and are acting in the public interest, they will certainly need to be protected.

Another part of the bill deals with offenders. I again indicate that the opposition will support the bill overall, but I think in this part of the legislation the minister and her government are attempting a bit of trickery; it is a bit of a con job, as I see it, especially when we look at the offence of dangerous driving causing death committed in circumstances of aggravation, as referred to in proposed section 49AB(1)(c). It is probably worthwhile for me to refer to that in a more detailed way, because the circumstances of aggravation are the most significant part of this bill when it comes to dealing with offenders. At page 3 of the bill, proposed section 49AB, "Circumstances of aggravation", states —

> (1) For the purposes of this Division, a person commits an offence in ***circumstances of aggravation*** if at the time of the alleged offence —
>
> (a) the person was unlawfully driving the vehicle concerned without the consent of the owner or person in charge of the vehicle —

In layman's terms, that would be interpreted as the person driving a stolen vehicle or not having permission to drive the vehicle. It continues —

> (b) the person was driving the vehicle concerned on a road at a speed that exceeded the speed limit applicable to the vehicle, or the length of road where the driving occurred, by 45 km/h or more; or
>
> (c) the person was driving the vehicle concerned to escape pursuit by a member of the Police Force.

Outlined there are three circumstances of aggravation. Proposed subsection (2) states —

> For the purposes of subsection (1)(c) it does not matter whether the pursuit was proceeding, or had been suspended or terminated, at the time of the alleged offence.

There is that further clarification in the bill. The new penalty provided for the offence of dangerous driving causing death committed in a circumstance of aggravation as outlined in proposed section 49AB(1)(c) of the miscellaneous amendments bill—in other words, escaping from police pursuit—is a minimum of 12 months' imprisonment. It is also stated that this sentence cannot be suspended. I think the government has attempted to appear tough by having a mandatory term of one year's imprisonment. I think it has been unsuccessful in a number of respects. Some people who have responded via talkback radio and other forums have asked why it would be only a year. There is some confusion in the public mind between maximum sentences and minimum sentences and what penalty will apply; maybe that is what the government has intended. I heard several comments from people who are not lawyers; they are just regular members of the community who have a basic understanding of what they have heard on the television and on radio. They have asked why in those circumstances a person would get only one year in jail. I have explained to persons who have raised it with me that the fact of the matter is that the penalty for dangerous driving causing death is up to 20 years' imprisonment depending on the circumstances, but that is a maximum penalty. The government is choosing with this bill to put in place a minimum mandatory penalty. It is a bit of a backhander at the judges. The suggestion is that judges are not tough enough and that they could be enforcing a 20-year maximum term in some circumstances and, I think, a 14-year maximum term in other circumstances. The suggestion is that the courts are not tough enough; therefore, Parliament will intervene with minimum mandatory sentencing, which most lawyers appear to resist and, potentially, I think, for good reason.

I want to deal with the 12-month mandatory sentence in the first place and then I will move on to the six-month mandatory sentence. At the briefing that was provided to me by the minister's office and the police department, I asked a pretty simple question—which I think most people in the community would like to know the answer to—about the minimum sentence of 12 months' imprisonment for dangerous driving causing death committed in a circumstance of aggravation; that is, the police are pursuing a person. Let us say that the police are pursuing a person, and that person engages in dangerous driving, crashes into another vehicle or into a pedestrian and causes someone's death. I asked what penalties the courts are currently meting out for that circumstance. Is there a case that I am not aware of whereby we need to rectify a problem? Has a judge given a sentence of less than one year in a circumstance in which a person driving a vehicle has been pursued by police, engaged in dangerous driving and then caused someone's death? I am not aware of such a case.

I sought some further advice. Again, I do not intend to take the full hour on this because I want to make good progress on this bill, and we can deal with some of the issues in consideration in detail. I have had a look through the Director of Public Prosecutions' sentencing guidelines that set out the leading cases for dangerous driving causing death or grievous bodily harm in circumstances of aggravation. I would like to refer to some of those cases and the penalties, because, as I understand it—again, I am not a lawyer—these cases have gone to the Supreme Court and are used for sentencing guidelines. Mr Deputy Speaker, as a former practising lawyer, I expect that you will know quite a lot about this matter. I want to refer to some of these cases so that people can see the penalties that were given out in these particular circumstances.

The first case I quote from the DPP summary is Voysey v Whatt—that is, V-O-Y-S-E-Y versus W-H-A-T-T. The decision was delivered on 11 November 2011, which is about a year ago. The DPP's summary of the facts states that it was an offence of aggravated dangerous driving occasioning grievous bodily harm, or DDOGBH, under section 59(1)(b) of the Road Traffic Act. The date of the offence was 11 June 2011. The maximum penalty was 14 years' imprisonment. It was a serious instance of offending. The appellant finished his shift at a pizza store in the early hours of the morning. During the shift, he had discussed with colleagues racing their cars along Albany Highway. The appellant left work with the victim, a 16-year-old work colleague, in the front passenger seat, and engaged in an arranged race with another work colleague, partly after being encouraged to do so by the victim. The appellant accelerated to approximately 120 to 130 kilometres per hour in a 60-kilometre-per-hour zone. As he approached a bend, he lost control of his car. The car slid onto the kerb and across a grass verge and collided with a garden bed, a metal bollard, a light pole, an advertising sign and a stationary vehicle. The stationary vehicle was pushed into a second vehicle, which then hit a third, which then struck a fourth. The victim received a fracture to the base of the skull and bleeding in the brain. The appellant received only minor injuries. The sentence was 12 months' imprisonment, with a total effective sentence of 12 months' imprisonment. In that case, no-one was deceased, but a 12-month sentence of imprisonment was put in place.

In another case, Abeyakoon v Brown, the decision was delivered on 23 March 2011. The person was 24 years old at the time of sentencing. He was convicted after an early guilty plea. He had no significant prior criminal record. He was living with his parents, had stable employment and strong family support. He had a business degree and so forth and was paying off the cost of the damage to the motor vehicle of approximately $50 000. Neither the victim nor his family wanted the appellant punished by imprisonment and had forgiven the appellant. The charges were dangerous driving occasioning grievous bodily harm, failing to stop, dangerous driving occasioning bodily harm and driving with a blood alcohol content of over .05 per cent. There are some further details. That carried a maximum penalty of four years' imprisonment. There are some details of that case. Obviously, factors included remorse and so forth. For the various counts, he was sentenced to 18 months' imprisonment, 12 months' imprisonment, six months' imprisonment and received a $100 fine for the blood alcohol conviction. The total effective sentence was 18 months' imprisonment with some eligibility for parole. Remorse was noted.

There are a range of other cases here. The sentence in Devine v State of Western Australia was delivered on 18 May 2010. A 21-year-old was convicted after trial. He had no relevant prior criminal record. He had a good supportive family. The DPP document states —

> Appellant broke collarbone trying to free passengers from car following crash.

The charges were one count of dangerous driving occasioning death under section 59(1)(b) and one count of dangerous driving occasioning grievous bodily harm. The offence date was 13 May 2008. The maximum penalty was 20 years and 14 years respectively for each of those two charges. This was categorised towards the high end of the scale of seriousness. The Director of Public Prosecutions document states —

> … "premeditated, clear-headed deliberate decision to drive at ridiculous speeds on a dark country road where the speed limit was 110km per hr. He had three passengers in his car and did not respond to his girlfriend's demands to slow down. The appellant understood that death was a likely consequence of his predilection for driving at dangerous speeds."
>
> Travelling at night on dark country road with 3 passengers. Appellant stated wanted to see how fast car would go and sped off.

On the DDOD charge he was sentenced to five years and six months' imprisonment. On the DDOGBH charge he was sentenced to one year and six months' imprisonment. He received a total effective sentence of seven years' imprisonment. The document states that there was some —

> Evidence of remorse (PSR; apology to families); suffered nightmares, anxiety attacks —

And so forth. The court had given a TES of seven years. On appeal, the TES was reduced to six years' imprisonment, reflecting criminality. It states —

> Allowed—individual sentences not disturbed; ordered that 6 mths of count 2 be served before count 1 begins, then sentences run concurrently.

The total effective sentence was reduced to six years' imprisonment. Again, we are seeing that the laws the government is putting in place here would not have affected this case either. In Taylor v State of Western Australia, the sentence was delivered on 17 December 2009. Taylor was convicted of one charge of dangerous driving occasioning death under section 59(1)(b). I note that his sentence was two years and two months for that offence. He was also convicted of one count of DDOGBH for which he got one year and two months' imprisonment. His total effective sentence was two years and two months' imprisonment. The comment here is —

> 18 yrs at time offence.
>
> Convicted after trial.
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> One prior conviction (driving offence involving alcohol when child).
>
> Good antecedents.
>
> Cannot be categorised as being most serious kind of offence or towards upper end of range.
>
> Driving a vehicle belonging to a friend—tyres bald but this was not known by appellant. At, or near, a set of lights a commodore has pulled up alongside the car and revved its engine—accepted by sentencing judge as invitation to race. Speed limit in area was 80km/hr, the area was dark and the road was wet from light rain. The appellant accepted the invitation and the race lasted approx 90 seconds with the appellant reaching 120 km/hr before …

This person is described as being "deeply ashamed and remorseful". He got a total effective sentence of two years and two months' imprisonment. On appeal, the total effective sentence was reduced to one year and eight months' imprisonment. There is some further commentary about that. Again, the sentence is certainly not less than 12 months.

The next case is Kay v State of Western Australia. The appellant was convicted after trial of DDOD and DDOGBH. He was convicted after guilty plea of DDOGBH. Without going into the circumstances of it, essentially Kay was charged with two counts of dangerous driving occasioning death under section 59(1)(b) of the Road Traffic Act. He got four years' imprisonment on each count of DDOD. For the DDOBH charge, he got one year imprisonment. He received a total effective sentence of eight years' imprisonment, which is significantly more than one year. An appeal was allowed. The sentence on appeal became two years and four months' imprisonment on each DDOD; one year and four months on the DDOGBH and eight months on the DDOBH. The total effective sentence was reduced on appeal to six years' imprisonment.

It seems that no matter how many cases I looked at—I went through a lot—I could not find any in which judges appeared to have been overly lenient or had given a sentence of less than a year when someone had been found guilty of dangerous driving occasioning death. Indeed, I could not really see any evidence of lenient sentences for dangerous driving occasioning grievous bodily harm either. The government has largely failed to make a case that this change will enhance outcomes in court in any way and that somehow people will get tougher sentences if they are found guilty of dangerous driving after a pursuit or even if they are not involved in a pursuit situation and the dangerous driving is committed in a circumstance of aggravation.

I turn to the case of Norris v AT. The person referred to as "AT" is a child. The sentence was delivered on 26 March 2003. The offender was 17 years of age at the time of offending. He was 18 years at the time of sentencing. There is certainly a belief in part of the community that if someone is aged under 18 years, they are dealt with exceedingly leniently. It appears to me that in this case they certainly did not get less than a year's jail. This person was convicted after a late plea of guilty on the first day of the trial. It reads —

> Extensive and serious prior criminal record—59 prior convictions including 13 offences for reckless driving and 13 offences for driving with no license.
>
> History of breaching CBOs.
>
> History drug use …

There are some other details there that I will not bother quoting. For one count of aggravated dangerous driving occasioning grievous bodily harm he was sentenced to 15 months' imprisonment. For two charges of driving

while disqualified, he was sentenced to four months' imprisonment and two months' imprisonment for each. For failure to stop, he received a $400 fine. For failure to stop at an accident, he received a $300 fine. For failure to render assistance, he received a $1 300 fine. For failing to report an accident, he received a $200 fine. For stealing a motor vehicle and driving recklessly, he received 12 months' imprisonment. For two counts of stealing a motor vehicle, he received nine months' imprisonment for each count. For one count of stealing, he received two months' imprisonment. For one count of aggravated burglary, he received 12 months' imprisonment.

The date of those offences was 20 February 2002. The maximum penalty was 14 years' imprisonment. This was a serious case of dangerous driving occasioning grievous bodily harm. The total effective sentence was two years and three months' imprisonment and a $2 200 fine. The state appeal was allowed, at which the total effective sentence was then increased to three years and six months' imprisonment, because the sentence for dangerous driving occasioning grievous bodily harm was increased to 21 months' imprisonment. There was also discussion on comparable cases and so forth.

These are the main cases that, as I understand it, are looked at when sentencing occurs for these kinds of offences. Judges look to these cases when determining what an appropriate sentence would be. In the case of Koltasz v The Queen in 2003, youth was a mitigating factor as it involved a very young man. The sentences imposed were: on count one, dangerous driving occasioning death, two years and six months' imprisonment; on count two, DDOD, two years and six months' imprisonment; and on count three, dangerous driving occasioning grievous bodily harm, 12 months' imprisonment. It was a total effective sentence of two years and six months' imprisonment, and an appeal on that sentence was dismissed.

I could list further cases but I think I have made my point here: if we are to see the bill in front of us as more than window-dressing when it comes to the charge of dangerous driving causing death, we would need to see evidence of a judge giving a sentence of less than 12 months' imprisonment. It appears to me that this mandatory sentence of 12 months is more about being seen to be tough on crime rather than actually being tough on crime. In fact, I note that there is only one circumstance of aggravation—that is, escape from a police pursuit in proposed section 49AB(1)(c)—that results in that minimum 12-month sentence. If the offence includes one of the other two circumstances of aggravation listed in the bill, the mandatory 12-month sentence will not apply. If I can, I will give an example. Again, as we had limited time to peruse this bill and I am not a lawyer, I have done my best to get my head around these issues. The minister, therefore, might contemplate a couple of examples and provide some response when she responds to the second reading stage of the debate.

The bill as it stands provides that each of the three circumstances of aggravation carry equal weight. Broadly speaking, a charge of aggravation is triggered if an offender is in a stolen car, is going 40 kilometres an hour over the speed limit and the police are pursuing or have pursued them at some point. The bill lifts the punishment for police pursuit above those other circumstances of aggravation by mandating a sentence of 12 months' imprisonment. I will put these two hypotheticals to the minister and perhaps she, or her advisers, can respond to them. Someone is riding their motorbike on a four-lane road; they hear a siren behind them; they check their mirrors; they can see that it is the police; they see a long queue of cars in the two lanes ahead of them; they split the lanes; they lose the police car; and they continue on their journey. Unfortunately, the person is constantly checking their mirrors to see whether the police have caught up and, because they are busy doing that, they do not see a young person step onto the road ahead of them and they cause grievous bodily harm to that young person. Under the proposed law, a first offender with no criminal record would need to be imprisoned for at least six months, as I understand it. That is my reading of the bill. Because they have at some stage been pursued—they are on their motorbike, they have got away from the police, they are checking their mirrors, they do not see a pedestrian and they cause GBH—they will automatically get a six-month mandatory jail term.

Compare that circumstance to another circumstance. Let us say it is the same person riding their motorcycle. Let us say this time they are in a 60-kilometre-an-hour zone and they are driving at 110 kilometres an hour because they feel like it and get a hoot out of doing that. A child who has been collected from day care breaks free of her parents and runs out on the road. The person then does all they can to avoid hitting the child but they do hit the child, causing GBH. The magistrate, in considering that the person is a first offender with no record, could sentence the person to 12 months—I am not talking about death here; I am talking about GBH—but could suspend the sentence for two years and the person would walk free from court.

It appears that the government with this bill is weighing one circumstance of aggravation against other circumstances of aggravation, and giving it a much higher priority than others. If at some stage someone—it might be a first offender—has been pursued by police, there is the requirement, despite any mitigating circumstances, to give that person a minimum six-month jail term. Yet somebody who is just a hoon, who shows a blatant disregard for the law, who drives at 110 kilometres an hour in a 60-kilometre-an-hour zone—more than

45 kays over the limit—and who causes grievous bodily harm to a child does not necessarily get a mandatory six-month jail term. I think many people in the community would see that second set of circumstances as circumstances which they would expect to result in a term of imprisonment.

One of the reasons that we have maximum jail terms is so that judges can make appropriate decisions on behalf of the community. From time to time there will be a sentence handed down by a judge that people in the community would disagree with. They would disagree with it without having sat through the whole case and having been in possession of all the facts. I am in no doubt that some sentences in some circumstances are too light; that from time to time judges, like everyone else, make mistakes; and that in other circumstances the laws themselves are inadequate.

However, having done as thorough a review of these cases as I could in the time available, the gross injustices do not seem to stand out, especially given that the trigger for these increased penalties is circumstances in which there has been a police pursuit and someone has ended up dead. I think given the government has tried to pretend that in circumstances in which someone evaded police and recklessly drove and which resulted in an innocent victim's death the offender would get less than 12 months' imprisonment, the silence has been deafening. I have not heard any response whatsoever from the government to say, "Look, there's a gross injustice there. This is the case we want to point you to." If the minister has such a case, please point me to it. If there is a case in which some blatantly inappropriate sentence was handed down, I am interested to know about it. But the tested cases in the Supreme Court certainly seem to indicate a different picture. It would further seem that by placing this legislation in front us in the way that it has, there are some potential further anomalies and justice may not seem to be done when one compares the sentence of one individual with another. I have given the example of someone who might be riding a motorcycle in different circumstances in which a child pedestrian ended up with grievous bodily harm and the different sentence that would result in each of those circumstances; one in which the judge under these laws retains discretion and one in which he does not.

It disturbs me that we have had to bring this legislation on urgently. There is no way that I would support not proceeding with the legislation because, quite simply, this is the last opportunity that Parliament is sitting before about next May for us to put the protections in place for police officers. Therefore, in my view, it has to go ahead. I will attempt to expedite passage of the bill today. But let me make this quite clear: elements of the Road Traffic (Miscellaneous Amendments) Bill 2012 need to be on the government's head. It said that it has had the bill in drafting at various stages over the last six months, that it has been making progress and that it has been consulting everyone because it wants to get it right. The government has now brought the bill into the Parliament and has said that this is the right legislation. We have been asked to deal with it urgently and we will, but I suspect that significant anomalies will flow out of this and there may well be some injustices. I for one will look to future cases to see what difference, if any, these laws make.

Just before I conclude, I have not dealt with every clause of the bill and every increased penalty. I do not think we need to do that at this stage because we will go through the bill rather thoroughly in the consideration in detail stage. Obviously, some clauses are very clear and I offer fulsome support to those. I will not refer to them all, but by way of example, for the offence of refusing, or failing, to stop a vehicle when called upon to do so by a member of the police force, the current penalty for a first offence is a $300 fine and for a subsequent offence it is $600. Under this legislation, it is proposed that those penalties will go up from $300 to $1 200 for a first offence and from $600 to $2 400 for a subsequent offence. I note that, for example, if someone was not wearing a seatbelt, went through a stop sign and refused to stop, currently, the penalty for that offence is only a $300 fine, so less than the penalty just for not wearing a seatbelt. Therefore, I think that a $1 200 fine is appropriate. People need to know that if they are called upon by the police to stop, they need to do so and that there is an appropriate penalty in place if they do not. It seems that that penalty has not kept pace with time. Therefore, I am pleased to see some of those small anomalies being rectified.

The opposition supports police officers having better protections when they are engaged in urgent duty driving. I think that some of the other provisions of the bill are more about the government somehow thinking that it can wedge the opposition by saying, "We're going to have mandatory sentences", because it knows that mandatory sentences are something that cause some concern on this side of the house. With respect to this bill, though, particularly in the circumstances of dangerous driving occasioning death, it would appear that this so-called tough penalty of a minimum sentence of one year is nothing more than window-dressing.

MR J.R. QUIGLEY (Mindarie) [3.55 pm]: I rise to speak on the Road Traffic (Miscellaneous Amendments) Bill 2012. I follow in my comments, of course, those of the shadow police spokesperson for the opposition and I take on board her comments, especially the comment that the bill is broken into two parts; one that deals with penalties for those who evade police when called upon to stop and who commit subsequent offences, and the

other part that is said to offer further protections to Western Australian police. I also note that the opposition shadow spokesperson said that although the opposition will support the bill, it will look for anomalies in the bill.

This bill came to the opposition only about a week ago. It has been a cake some time in the making and no doubt involved liaisons with the Western Australian police department and the union, which were seeking these amendments. The minister nods her assent; her nod indicates that it is in fact the case that there were negotiations with the Western Australian Police Union. If I were still the lawyer for the Western Australian Police Union, which I was for 27 years, and Michael Dean were still the president, it would be both horrified and sickened by some of the provisions in this legislation, as so often happens when legislation is prepared in a rush for a political purpose. In making these comments, just to put it into perspective, not only was I the union lawyer for more than a quarter of a century, but also I would say with confidence that no other lawyer in Western Australia has defended more police officers who were charged with dangerous driving causing death or dangerous driving causing bodily harm. For example, I looked after many police officers at the Coroner's Court, including Sergeant Donovan who was driving for 79 Division when he had an accident outside what is now Claremont Medical Centre. Sergeant Donovan T-boned a car whilst he was doing about 90 or 100 kilometres an hour, killing five of the elderly occupants; only the driver survived. He was on an urgent duty errand to attend a liquor store in Mosman Park where an armed offender was on the premises, and he was dispatched by VKI. It was a chilling Coroner's Court hearing because it played the tape that VKI had running and in the background it has the Telecom clock giving a second-by-second countdown with Sergeant Donovan's passenger saying, "It's 8.33, passing the rose gardens in Nedlands" and "It's 8.33 and a half, passing Padbury's in Nedlands", and we all know that in 90 seconds, five people are going to die when this police car T-bones their vehicle. I represented those officers at the Coroner's Court and they walked away unscathed, actually with commendation.

The last case I did when I came into this Parliament was to defend a police officer who had been charged with dangerous driving causing death. The death he was charged with causing was that of his police officer passenger, when he was going to an emergency at the Stoneville tavern, accelerated up Great Eastern Highway, came off the road at John Forrest National Park and hit a tree. The police department charged him with dangerous driving causing the death of the constable who was sitting in the passenger seat. I defended him—that case went part heard when I came to this place and those who were here at that time will remember I had to excuse myself to go and finish that case—and he was acquitted. I think that in the 25 years of defending many of these officers I never—this is no boast of mine about my performance—was involved in a case in which an officer was convicted, ever, of bodily harm or death or reckless driving resulting from urgent duty driving. I never knew a case, in a quarter of a century, in which the officer was convicted. In her response the police minister might want to take me to some of these cases, but I have never known an officer to be convicted of dangerous driving causing death or bodily harm when it was a genuine case of urgent duty driving. In her explanation about the legislation to this house the honourable minister said —

> This bill seeks to do two things in relation to pursuits and emergency driving. Firstly, it seeks to ensure that police officers who engage in pursuits and other forms of emergency driving have better legal protections than is presently the case.

I will argue that is wrong. The government has mucked up fantastically and has diminished the protection for police officers, as so often happens when these things are done in a rush. The minister went on —

> The government is conscious that only a limited and inconsistent protection from criminal liability is currently afforded to police officers who seek to pursue and apprehend individuals, or who are responding to a range of other situations that occur out on our roads and in our community.

Of course, there are the protections in the Road Traffic Code for drivers of emergency vehicles that authorise or excuse them in situations when, while driving an emergency vehicle, they do break the law by proceeding through red lights or exceeding the speed limit or going through stop signs, when they have sounded a warning device and it is safe and expedient in the circumstances to do so. In all the cases I appeared in, the magistrates and the juries could not conclude that the police and the prosecution had proven beyond a reasonable doubt that it was not the police driver's honest and reasonably held belief that it was safe and expedient to go through the intersection. Under the Criminal Code of Western Australia, if an officer is on urgent duty driving and goes through a red light, he is only permitted to do so when it is safe and expedient to do so. If the police want to allege against that officer that he is in fact guilty because it was not safe and expedient to do so because there was a mighty collision, it also has to be proved, beyond a reasonable doubt, that the driver of the police car did not have an honest and reasonable belief that it was safe and expedient to do so—that at all particular times, all relevant times, the officer did not have a belief about the safety and the expediency of going through the intersection. I do not know whether Sergeant Tilbury, the president of the Western Australian Police Union of Workers, is listening now, but if he is, he might want to have a cup of tea and a Bex, and just calm down a bit as

to the colossal stuff up that has happened here. I now take members to what is put in the legislation as the proposed section that will increase—this is what happens when legislation is rushed—protection for police officers under clause 11 of the bill. We will vote for it; this is what the police union and the government wants. The minister has said that this was negotiated with the government. I do not know what Sergeant Tilbury's constituents will think when this goes through, but this is the new position in Western Australia after we get this emergency legislation through. In clause 11, proposed new section 61A states —

61A. Reckless or dangerous driving — defence for police officers in certain circumstances —

I will interpolate to give the offences for the given section numbers —

(1) It is a defence to a prosecution for an offence against section 59(1)(b), —

Dangerous driving causing death —

59A(1)(b), —

Dangerous driving causing bodily harm —

60(1) —

Reckless driving —

or 61(1) —

Which is dangerous driving. Here it comes —

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; —

Then there is the conjunctive —

and

(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 —

Conjunctive —

(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.

The government has reversed the onus of proof so that in all of those cases in which I was defending officers where it was incumbent upon the prosecution to prove that at the time that the driver went through the intersection he did not have, and could not have, a reasonable belief that the way was clear to proceed, that has been reversed on the officer. The government has done the switcheroo and now it says that the defence applies to the officer—there is burden on the officer. We all know what the Court of Appeal and the Court of Criminal Appeal say in Western Australia: where the legislation casts a burden on the accused, it is for the accused to discharge that burden on the balance of probabilities. That is what is done in drug legislation. In drug legislation if a person is in possession of drugs of over a certain weight, he is deemed to possess those drugs with intent to sell or supply unless the accused proves the contrary. Therefore, urgent duty police drivers have been reduced to the same legislative defence that druggies have to rely on—that is, to prove their own innocence. The minister shakes her head, but she will be taken through this in detail in consideration in detail. The bill states—I will take it through again slowly, because it is just a stunner as far as errors go —

(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 satisfies the court that, at the time of the alleged commission of the offence —

Therefore, no longer can the accused, as Mr Rayney did in his trial—I am not making any criticism of Mr Rayney—simply say that the prosecution's case has not been proved and that he chooses not to give evidence. The police cannot do that anymore; they are in a different situation. They have to go into the witness box and prove three things on the balance of probabilities—this is the driver, and this is the driver who at the time was acting under VKI dispatch. The government cannot come along here and try to claim political points for offering these protections to the union and its members; it has to 'fess up and say that this legislation does the contrary. It takes away and diminishes police defence. It diminishes them and leaves them more exposed. What does the police officer have to prove as a result of this accident or this collision in which someone died, which will be an offence under section 59(1)(b)—that is, he has proceeded at speed through a red light and had a collision? I have defended those cases in the past. In the past, the police had to prove beyond a reasonable doubt that he was not an urgent duty driver or if he was an urgent duty driver, at the time of the collision, he had no basis to believe he

could proceed into that intersection safely. Now the driver has to prove three things—this is what the government has done to this poor driver. He has to go and offer to the court evidence upon which the court can be satisfied on the balance of probabilities—not beyond a reasonable doubt; that is not what the Court of Appeal of Western Australia says and nor is it the law—that at the time of the collision he was on official duty as a member of the police. I have also been involved in cases in which the driver was on his way to or from work and saw an offence. If he was on his way to or from work—that is, if he was using the vehicle for the purpose of going home or going to some other function that did not involve work—the question arises: was he on official duty when he entered a pursuit? The driver has to prove that on the balance of probabilities now; it has been changed from the prosecution having to prove it against the driver. Secondly, the police driver who was involved in this collision and who was obviously traumatised by the collision has to then go and establish on the balance of probabilities that at the time he or she 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. The officer might not have even received the latest guideline, but he or she has to prove on the balance of probabilities that it applied to them. I have not seen the guidelines or the policies. During the course of the debate, does the minister intend providing us with the policies and guidelines? They are a secret document as far as I can tell.

Mrs L.M. Harvey: I will not be tabling that document, no.

Mr J.R. QUIGLEY: So the Parliament does not get to see what we are being asked to vote for.

If members went out on the street now and asked officers to recite the commissioner's guidelines for emergency or urgent duty driving, eight-tenths of the officers out there could not do it. They would know that they should probably contact VKI, but eight-tenths would not be able to recite it. If the officer is taken to court and prosecuted, there is a new thing in Western Australia.

[Member's time extended.]

Mr J.R. QUIGLEY: There has been a new and backward step in Western Australia. The police driver has to prove that at the time he undertook this action, he was substantially within those guidelines. We do not know what the guidelines are. We are being asked to vote for this, but we do not know what we are putting the police up to. We do not know how hard we are making it for a police officer to defend himself now. We were able to tell —

Mrs L.M. Harvey: Will the member take an interjection? Do you think that the police officers who are qualified for emergency driving, which is the prerequisite to engage in emergency driving, may have acquainted themselves with the commissioner's policies and guidelines? They have to be qualified to do the driving.

Mr J.R. QUIGLEY: I have limited time, and we will go through that in detail in consideration in detail.

Mrs L.M. Harvey: I think those officers know.

Mr J.R. QUIGLEY: We will go through that in detail.

This legislation does not say that they have to be a qualified driver. This legislation provides a defence if they are an officer on duty. It requires that officer to prove these things. We are making history. For the first time in Western Australia, a government of Western Australia is reversing the burden of proof on the police. What an outrage! For the first time in Western Australia's legal history, the government has seen fit to reverse the burden and diminish the police defences. The next thing that the officer has to prove is that he is substantially within the guidelines. We do not know whether that officer even knew what the guidelines were. The legislation provides a conjunctive—as they say, "And there's more!" The officer also has to prove—not the prosecution prove the contrary proposition—as a matter of positive proof that, having regard to all the circumstances of the case, it was reasonable and in the public interest for the officer to have driven in the manner in which he did. Now the officer has to bring evidence before the court; it is not just a matter of submission. The legislation specifically predicates this defence being available to the police—if the police officer "satisfies the court that". One of the things the poor officer has to "satisfy the court that" is that it was in the public interest. Even though it is only on the balance of probability, this is setting a particularly high bar for the police officer and their union who will be supporting the police officer, because they are going to have to call evidence before this case to demonstrate that not only was he on duty, but also that he was "substantially"—whatever that word means—within the guidelines. They are left exposed there, because a point of argument after the death will be whether he was substantially or not substantially within the guidelines. It is not for the government to prove that; it has thrown this burden back onto the police, onto the urgent duty driver. Talk about a screw-up!

He or she then has to adduce evidence before the court to satisfy the court on the balance of probabilities that all of this was in the public interest. We only usually talk about elements of offences—that is, in an assault, for

example, that someone was hit and that the touching was unlawful. We only usually talk about the elements of an offence as being those things that the prosecution has to necessarily prove to secure a conviction. But here it is quite appropriate to talk about elements of a defence, because for the first time in Western Australia's legal history, the government has decided to throw this extra burden onto urgent duty drivers by requiring them to satisfy the court on the balance of probabilities. Where does this poor constable start on introducing evidence that it is in the public interest? I do not know of a criminal offence in which a person has to run a public interest defence. I know about it in defamation law, but I do not know about a criminal offence in which the prosecution has to prove something about the public interest one way or the other. But here it is not the prosecution's job to prove public interest. The government is throwing this broad and unspecified burden onto a police pursuit driver and saying, "Listen, constable, if you want to avail of yourself of a defence, you come and prove to the court it was in the public interest. That is the way we have drawn this legislation. That is what we negotiated with the police union." If they want it, we will vote for it. We have been told that if we do not vote for this legislation, we are in trouble. The federal government wanted this and the Western Australian Police Union wanted this, and they are going to get it.

I think it is a disgrace that we would have police officers out there on rainy nights, as Sergeant Donovan was on that dismal night when, as a driver for 79 division, he got the call that there was an armed offender on the premises at a liquor store in Mosman Park. He responded to that call. He was near the old Swan Brewery. He tramped it; he was doing 90 or 100 kilometres an hour through the traffic, knowing that there was a woman proprietor on premises being threatened by a gunman, and VKI had designated him—the 79 division used to be the violent crime emergency response—to go, and to go hard. He was doing it all in accordance with what he was told. I think of the difference today if I were defending him.

There were critics who said that to move through Nedlands in heavy traffic, in rain, at 100 kilometres an hour, was problematic in any event. But I kept going back to the law as it was; namely, that the prosecution would have to prove beyond a reasonable doubt that he did not have an honest, reasonable belief that it was safe and expedient to do so.

When he got close to the Claremont Medical Centre, there were six people over the age of 80 years who had been out to celebrate the driver's eightieth birthday at the Chinese restaurant opposite the Claremont Medical Centre, which in those days I think was called the Highway Hotel. They were travelling in their car back towards Perth, and they had gone only half a block and had turned right into Bay Road, which is around the side of the medical centre, at the same time as Sergeant Donovan was flogging it down to Mosman Park to apprehend this armed offender, and he went through a red light at—the member for Merredin, who lives down that way in Nedlands would probably be able to help me here—Locke Street. Sergeant Donovan went through a red traffic light at Locke Street, but he had a perfect defence, if charged; his perfect defence was that he believed it was safe and expedient to do so. About 30 metres beyond the traffic light, the car full of octogenarians had turned right across Sergeant Donovan's path of travel. They did not hear his siren. Perhaps they had the radio on, as has happened in more than one death involving police emergency driving that I have been involved in. He T-boned them, and they all died instantly of broken necks, except for the driver, who had his seatbelt on. This poor man was destroyed. His wife and the neighbours on either side of him in Dalkeith were all killed in an instant.

Under this law, Sergeant Donovan would have been presented with a higher hill to climb. He would have to prove his innocence. He would have to prove it on the balance of probabilities. It is tragic that this is happening. Why is this happening? Whenever this Parliament rushes into legislation for a political reason, it inevitably makes a mistake. The framing of these laws needs to be very precise. Why is this happening? I do not blame the police union. The union, looking to its constituency, said that it wanted laws to be enacted by a certain date. The government did not want to go to an election having stood up the police union by a certain date. Parliament will rise in about two weeks; we have only two more weeks of sitting in this place. The opposition politically did not want to enter this chamber and vote against legislation that the government has negotiated with the police union. But the government and the police union have to go out and tell the police that this bill will change the rules. This bill that the government has brought before the house will make it harder for police officers to defend their position. It will oblige police officers, as a requirement of law, for the first time in Western Australia, to prove three things in their own defence. That is something that they have never had to do before. This was negotiated between the Minister for Police and the police union. In fairness to the minister—I am not putting her down—she is not across the law or across any of these issues. She is doing what she is told to do. This is the outcome that we want. This has not been thought through.

Mrs L.M. Harvey: You do not know me well if you think I am doing what I have been told to do.

Mr J.R. QUIGLEY: The minister is saying that we do not know her well. So, this is calculated! The government is saying, if that is the answer, that it has thought this through—that moving the burden onto the

honest police is a calculated move! This is a bill that I will be voting for with the greatest reluctance. I am voting for the bill only because I am being shoehorned into voting for it.

Mrs M.H. Roberts: Member, the minister interjected on you, "You've got it wrong"—so, despite your considerable court experience, she believes she knows more about this than you do.

Mr J.R. QUIGLEY: Thank you, member for Midland.

We will take the minister through this in detail in consideration in detail. But it is with great reluctance, and a heavy heart, that I will be voting for this legislation, which will make it harder for honest police in Western Australia. I realise that publicity-wise and political-wise, we are up against a wall, because if we refuse to vote for this legislation, the police union will say that the Labor opposition stopped this legislation from going through by their prescribed time line, and the government will accuse us of standing in the way. However, neither of them will tell every police officer, "We've screwed it up and we've made your job more difficult as urgent duty drivers. We've now made it so that should you be charged by the police department, or by your superiors by internals, with dangerous driving causing death, there will be a burden of proof on you to establish these three things beyond a reasonable doubt"—and that is wrong.

MR A.J. WADDELL (Forrestfield) [4.25 pm]: I rise to support the Road Traffic (Miscellaneous Amendments) Bill 2011. Notwithstanding the excellent points just made by the member for Mindarie, this legislation greatly concerns me in that it might have a negative impact on what police officers need to do. However, I certainly support the intent of this legislation. I do so for this reason, and I want to make this point very clearly. The member for Midland made the point that there are parts of this legislation in which mandatory sentencing has been inserted. That was probably a calculated political move to upset certain portions of the Labor opposition. I will be quite happy and open and honest to say that I am part of that Labor opposition that tends to rally against things such as mandatory sentencing and the idea that we should take discretion out of the courts. I am one of those persons who are constantly a pain in the side of some of our shadow ministers by reminding them of the need to preserve the civil liberties of Western Australians. This has become one of the key things that I have campaigned for in the four years that I have sat in this place.

Therefore, when I saw that another bill to do with policing matters was on the agenda, I had a close look at the legislation, thinking, "Oh, no; here we go again." I must say that I do not have the developed legal experience of the member for Mindarie, so I missed the key point that the member just made. But I looked at the mandatory elements of the legislation, and I asked myself these deep and honest questions: In what circumstances could an innocent person get caught up in this? In what circumstances could an ordinary member of the public suffer as a result of an unintended consequence of this legislation? I racked my brain, and I could not find one instance.

To my mind—I think I would be at one here with my community—if somebody engages in an activity in which they are actively seeking to avoid being caught by the police and are actively leading the police in a high-speed chase through our suburban or metropolitan or even country streets, it would seem to me that that is as premeditated as we can get and that is as dangerous as we can get, and our community would be 100 per cent behind any attempt to stop that behaviour and any attempt to see the people who perpetrated such a criminal act prosecuted to the full extent of the law; and that law should be one that ensures that there is a mandatory period of detention. Therefore, I find it very strange, coming to the end of my first term in this place, to say in this instance that I support a mandatory sentence in this particular circumstance.

But—the minister knew there was a "but"! The "but" is not a defect in the law. It is not a defect in this bill that I perceive. It is a defect in our thinking. What we do as legislators is legislate. But, unfortunately, the people who perpetrate these crimes are not, dare I say, as rational as we are. They are not necessarily au fait with the law. I refer to the minister's second reading speech. The minister said in the concluding paragraph of her speech —

> It also ensures that individuals who have shown a willingness to put the lives of police officers and other road users at risk to further their own criminal behaviour are incapacitated in jail so they cannot continue to be at risk to the community.

I would endorse those comments. The minister continued —

> In doing so, it sends a strong message to the community that the actions of people who evade police are not acceptable and will not be tolerated.

It sends a message to a community, but the community to which it sends a message is not the community of people who are committing these crimes. We can increase penalties and have mandatory sentences of years and years; we can do all sorts of things, but irrational people do not make rational decisions. Irrational people do not sit there and say, "Well, gee; three months ago I would not have faced imprisonment, but now I will face six months' imprisonment. Gee, it's a little too high for me now, so I'm not going to engage in a high-speed chase

with the police". They are not going to say, "Oh, the fine's just increased from nothing to $36 000. That's too much for me; I'm not going to engage in that". They are not going to see that the penalty for dangerous driving causing bodily harm was previously $8 000 and is now up to $18 000; that is not going to deter them in any way. It is not going to happen. These are consequences that, hopefully, the people who perpetrate these crimes will face, and hopefully society will have some sense of justice as a result; but they certainly will not affect behaviour. That is the problem I see; rather than being seen as being tough on these crimes, sending a message to the community will not stop these crimes from happening. I think the onus is on us to see what we can do to stop them from happening.

Again, I refer to the minister's second reading speech. In her opening paragraph she pointed out that in 2011 and 2012 there were six incidences of death or serious injury arising from police pursuits. I thought that six seemed a relatively high number. If we do a little research into this we see that, nationwide, these high-speed chases are leaving a large swathe of death and devastation behind them. In fact, the last time that this issue came before this Parliament was back in the 1990s. A report was commissioned that showed that every time a police officer made a request to pursue, it cost the state X amount of dollars because there was almost a guarantee that there would be damage to vehicles, damage to people's properties and, unfortunately, in many instances, damage to people in the form of injury or even death.

In respect of those six incidences of death or serious injury, I went to the police website and had a look at the general statistics for death and critical injury over that same period. For 2011 it was 179 in total, which is pretty much where we are at the moment in terms of the road toll. But if we think of the six being part of that overall statistic—I presume that it would be—it means that police chases contribute something near three per cent of the deaths or critical injuries on our roads. If we are talking about the Towards Zero strategy, obviously the question must be: how can we reduce three per cent straight off the top? If we could avoid these sorts of high-speed chases, we would be three per cent closer to our goal of achieving a zero fatality rate on our roads.

I think we need to turn our minds to how we can achieve that goal. Many in this place who know me will know that I have a penchant for technology; I think there is probably a technological solution to this problem. I would like to draw the attention of the house to a system known as StarChase. StarChase allows the police to shoot a projectile at a vehicle that is trying to escape from them, and the projectile contains a global positioning system tracker and radios back the GPS position of the vehicle. We are all now fairly familiar with GPS technology and the ability to track things that way; there would be no need to engage with a vehicle that is being tracked that way in a high-speed chase. The police would be able to drop back and let it make its merry way to wherever it is going, with the full ability to see where it is going. They would have the ability to deploy other police ahead of the vehicle to create blockades, or find out where the vehicle has stopped and apprehend the perpetrators at that time. I am not advocating StarChase as the only solution, but it is certainly a solution that I think needs to be put on the table.

We need to remind ourselves why these high-speed chases are occurring. Sometimes it might be as a result of a motor vehicle infraction having been detected; somebody might have been speeding or run a red light, which drew the vehicle to the attention of the police. It might be that the vehicle is stolen, and again, statistics bear out the view that that is often the case. If we look at the people who are driving these vehicles, we see that they are often people who have a history of dangerous driving and in many cases they are unlicensed. Indeed, in many cases, they are youths who do not have drivers' licences. When we look at the types of sanctions that we are trying to place on these people, we have to ask ourselves: will any of this have any impact on the behaviour of a couple of 14-year-olds joyriding in a car? The answer is no; it really will not. They will go on their merry way and bring about the death and destruction that we have come to associate with these sorts of chases, and the police will be required to pursue them and try to stop them continuing in their dangerous ways, putting themselves at considerable risk in the process. If we were to equip them with an appropriate piece of technology, it might save the lives of not only innocent people on the streets but also police officers. I think we need to look at technology.

Technology in road traffic enforcement is a very interesting topic. I am not a big fan of Multanova radars, although I cannot argue that they are ineffective. People drive at much slower speeds these days than they did 20 or 30 years ago; that is partly because of the introduction of Multanovas, and partly because it is difficult to get to speed in Perth these days because our roads are so congested. But certainly I am aware of having to be much more vigilant about what speed I am travelling at. It would be very rare for me to find myself going above the speed limit; more often than not, I find myself falling 10 kilometres below the speed limit these days. I certainly would not have been able to say that when I was younger. Perhaps that is part of the ageing process and the fact that I choose to take fewer risks, as one who has hit the middle point of life and would like it to be closer to the beginning of the middle point than the end! Nevertheless, I have always felt that Multanovas were a bit dodgy,

and I think there is not a great deal of love for them within the community generally. I think that is because people see them very much in the same way as the old highway robber; they are sitting at the side of the road, hidden behind bushes, ready to snatch something out of their wallet! The criticisms that people seem to frequently make is that they are hidden in places where it is perfectly safe to be a few kilometres over the speed limit, that they are hidden just after a major change in the speed limit, not allowing people an opportunity to slow down, or that they are set so low that someone would have to look only at their speedometer rather than the conditions of the road, thus defeating the safety element. However, if we were to set these devices at 10 or 15 kilometres above the speed limit, there would almost be universal love for them. I could name dozens and dozens of suburban streets in which the residents would sign up today for fixed speed camera detection on their street.

These dangerous drivers with whom this bill deals are on our suburban streets now. They drive at incredible speeds of 120 kilometres an hour in 50-kilometre-an-hour zones where there are playgroups and childcare centres. People are saying that it is only a matter of time before a kid gets killed on these streets. I do what I can. I work with the local police, but they are limited by the resources they have. It seems to me that we have a technological solution. We could deploy these sorts of devices in those areas. We could simply pass legislation that would allow a local government to deploy them. We could put in place a cap so that a local government would be allowed to enforce its local speed limits within a 10-kilometre range; in other words, the local government would not be allowed to ping someone for doing 52 kilometres an hour in a 50-kilometre-an-hour zone, but if they were doing 65 kilometres an hour, the local government could do that. I somehow suspect that a local government would recoup its investment in a Multanova very quickly. Most importantly, we would catch the very people who will ultimately be caught by this bill—the people who are prepared to travel at high speeds on roads—and get them off the roads.

As I conclude my comments, I will come back to my earlier point. Normally, I would be one of the people rallying against another attack on civil liberties or a mandatory sentence or anything such as that. I do not think it applies in this case, because the people who take these risks are putting at risk not only their own lives, but also the lives of our police officers and innocent members of the community. If we have any job, it is to keep our community as safe as possible. We cannot necessarily do that just with legislation. Legislation is only a small part of the picture. We need to mix it, and the best mix we can add to that legislation is the use of adequate and effective technology.

MR W.J. JOHNSTON (Cannington) [4.41 pm]: I rise to make a few comments on the Road Traffic (Miscellaneous Amendments) Bill 2012. I will be very interested to hear the minister's response to the points made by the member for Mindarie. It appears that if the government is giving a defence, that is an affirmative defence. I am no lawyer, but the plain words seem to indicate that the defence is for the accused. The minister interjected on the member for Midland to say that she and the member for Mindarie had it wrong. It will be very interesting to know why the member for Mindarie is wrong, because it appears that this is a defence. We have dealt with a number of other pieces of legislation—not the least of which was the Cat Bill—that provided a reverse onus of proof, and there was quite some discussion about that. It appears that the bill provides that for a defence to be successful, the police officer will have to prove this. If the answer to that is that if these matters are evident and the prosecution will not proceed in any case, this is not an additional benefit. If the minister's position is that, to proceed with charges under those four offences, the prosecution will have to prove that these issues were absent anyway, what is the advantage of the proposed section? If it is intended to be an additional protection, it would be very good for the minister to explain how it is an additional protection, because on its surface it appears to be a defence. The proposed subsection starts off by stating that it is a defence to a prosecution. It appears that it is setting up a defence and that it is not a qualification in respect of the prosecution. Of course, the prosecution will still have to prove the elements of the offence, but that is not what this relates to. It is not about the prosecuting authority being required to prove something to a high standard; rather, it is something that the defence will have to prove. The proposed subsection goes on to state —

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

And then it lists the three criteria. I am not quite sure what the minister's argument is. I would be very interested to know, because on those plain words, it appears that the member for Mindarie is 100 per cent right. I note that subsection (2) states —

> Subsection (1) does not affect the application of any other defence the accused may have.

Again, I make the point that that is about a defence; that is not an obligation of the prosecution. So it does not appear that we are dealing with what I think the members of the police service want, which is protection from prosecution. This is not a protection from prosecution; this is about a defence. As the member for Mindarie

pointed out—as I say, I am no lawyer, but this is my understanding of the law—when it states that the accused must satisfy the court, that is an affirmative action. It is not like a person's right to silence whereby if they do not do something, that gives them a protection. This is about requiring the accused to prove something. In this case, we are talking about a police officer. Again, I just draw the minister's attention to the heading of proposed section 61A, "Reckless or dangerous driving — defence for police officers in certain circumstances". From what I have learnt, the heading of a clause does not act to change or otherwise affect the words of the clause, but it does tell us in this chamber what we are talking about. This provision is not directed at prosecuting authorities. Quite clearly, it is the contemplation of this minister to have this matter directed at the accused; in this case, the accused is a police officer, because this is a defence for police officers in certain circumstances.

I am sure I will be very enlightened when the minister explains in her response to the second reading debate exactly why the member for Mindarie is wrong. As I said, I am no lawyer, so I would be very appreciative of the minister's clear and detailed explanation of the matter. Given the many, many years of experience of the member for Mindarie and his great depth of knowledge and understanding—members do not have that depth of understanding and experience and, just like the minister, we are not specialists in these matters and need to rely on the advice of others—it would be very interesting to hear what the minister has to say in that respect. I note that the minister has not offered up any commentary during my comments and it will be interesting to see what is being said. I also would like to know in that commentary whether the inclusion of this specific defence will have any impact on the way that a prosecution proceeds. Will there be a narrowing of the duties of a prosecution? As this specific defence is being created, will these matters be assumed to exist in the prosecution unless the defence can prove that they do not? Is that what is being said? That would be a very great contribution from the minister.

I want to turn to some of the policy aspects of the bill. First, I have great sympathy for police officers needing to do urgent duty driving. I have never seen a police officer have an accident. On the other hand, I have seen a fire engine run into a small car in a busy traffic situation. I know from my experience—I was not directly involved; I was a witness to that accident—the effect it had on the woman who was driving the small car that was hit by the big fire truck as it was making its way through a red light and I know the effect it had on the driver and other firemen in the vehicle. So I can only imagine what it is like to be involved in those types of incidents. I cannot imagine that any police officer would want to be involved in those types of incidents. I think it is worth remembering what this bill is not about. Of course, this bill is not about the situation that arose recently for the police in Mount Lawley or wherever it was in the northern suburbs. This is about when police are involved in authorised pursuits. I have read that that was not the case in that matter. I understand that we are also talking about police officers driving pursuit vehicles. I ask the minister to explain whether police driving non-pursuit vehicles will be dealt with through this legislation. That is of interest to me. Is it only for police officers involved in authorised pursuits while driving pursuit vehicles or is it for police officers in any other circumstance? It is worth the minister providing a clear understanding of whether that is the case. I look forward to knowing whether that is the case.

In relation to the procedures set out in that section to which we were just referring, the minister has said that she will not provide Parliament with any of the details about the commissioner's policies and guidelines. I would appreciate a clear explanation of why that is the case. Is there an operational reason? Perhaps the minister does not want other people to know the rules so that people will not know what circumstances would lead to an authorised police chase. Or are there questions of insurance liability? I would like to know exactly why that is. I would also like to know how police officers availing themselves of the defence are expected to prove whether they have complied or substantially complied with the commissioner's policies and guidelines. Do they have to produce those documents in the court? What is the level of proof? How will they go about showing that the policies and guidelines have been complied with? If the documents are required to be shown in open court because that is part of the defence, why are they not being included here in Parliament so that we can see what is being contemplated by the law? It is a bit strange that we are not allowed to see what is contemplated by the law but it is necessary that the courts see it.

It may be the intention of the minister to keep this information private because we do not want people who might want to misbehave in the community seeing what the rules are. However, it would appear that we will end up having those policies and guidelines entered into the court anyway because the police officers will have to prove that they have complied with them. Surely it would be impossible for a police officer to prove he has complied with them if he cannot prove what they are. It appears that the defence will require that information to be made available to the court. Otherwise, the second thing that must be proved—that the police officer must comply with proposed section 61A(1)(b)—will not be capable of being proved. I think that is a pretty straightforward consideration. The minister's position is that police officers are to be given some additional protection. However, as the member for Mindarie has pointed out, it is a change to the current procedures to make it harder for police

officers, not easier. I need to know how the minister expects police officers to prove their compliance if these guidelines are not available to the community.

I will go on a bit further about some other policy-related issues. People in the community expect police officers to apprehend people who break the law. People in the community see that one way of doing that is chasing a vehicle. It is interesting that insurance companies do not always share that position. Many insurance companies say that people are more likely to recover a car if it is not pursued. For them the cost of dealing with stolen vehicles goes up if police engage in pursuits. I am no expert on that issue and it would be interesting for the minister to let us know whether any calculations have been done about that issue. I am specifically talking about stolen cars and not about other circumstances in which a police officer might chase a vehicle.

I note the tragic circumstances in the member for Belmont's electorate the other night when a stolen vehicle crashed into a taxi and killed a taxidriver and a newly arrived English visitor. According to the news reports, the car was not being pursued at the time. I make the point that regardless of whether a pursuit is done, there are often tragic circumstances because the people involved in the high-speed vehicle are often so inclined or addled by drugs or in some other circumstance that even when police do not chase them, they still behave recklessly and endanger the community.

I note the comments from the member for Forrestfield. He said that normally he would not support minimum sentences, but of course in this case there is no real effect from the minimum sentence because, as the member for Midland outlined, the minimum sentence is less than what the person would get anyway in the circumstances of these sorts of tragic accidents. The member for Midland has asked the minister to explain any examples in which courts in Western Australia have provided a sentence of less than the minimum on conviction.

Mrs M.H. Roberts: For those serious crimes such as when death or grievous bodily harm is occasioned.

Mr W.J. JOHNSTON: Indeed. This goes to one of the issues that always arises with these types of laws. This is about the headline rather than the contents of the bill. The minister and the Premier are able to go out in public and say, "We are cracking down on high-speed chases", when there is no change apart from introducing a minimum penalty or reviewing a couple of maximum penalties. That is the sort of review that happens from time to time in Western Australia. It is also interesting that the Premier and the minister can go out in public and say that they are Liberals and that they believe in less governance and fewer laws, yet this is another demonstration of increasing laws. Again, I make the point that I am not opposed to that. The Labor Party has never been opposed to regulation. It is the Liberal Party that tells us that regulation is bad. So, we get this conflicting argument whereby at the last election the now government went to the people and complained about how the Parliament was passing more and more laws.

I note that the federal leader of the Liberal Party is promising two days a year of repeal hearings for Parliament. Two days of the federal Parliament's time would be spent repealing laws. It would take many, many days to repeal all the many laws that this government has brought in, because it has been a very, very active government in increasing the number of laws in this state; regulating individuals' behaviours; doing more and more on law and order in legislation and regulation. That is what this government is really about. As I said, I am not saying that that is a bad thing. I am just making the point that that is what this government has done, as with many of the things to do with this government's position on law and order.

I note a quote from Winston Churchill in which he said, "A lie gets halfway around the world before the truth has a chance to put its pants on". When we look at the legislation of this government and its position on many of the laws we deal with in Parliament, we can only but see the truth of that quote from that esteemed Conservative politician that is said to be the inspiration for so many people on the other side of the chamber—and this bill is another example. This law makes some small changes around the edges but allows the minister to say that she is acting. It does not achieve what she said she set out to achieve, but at least she can stand up and act. As we heard from the member for Mindarie, the law will take the protections for police officers backwards and not forwards. We will deal with this matter when we go through the consideration in detail stage, but as far as I am aware—I look forward to hearing the minister refute this—there is no example of serious accidents that the minister talks about having been dealt with by an increase in penalties. In any case, the penalties are already above the minimum.

I will just finish on this point. I think it is incumbent on the government to be respectful of the courts of Australia and of Western Australia. They are as legitimate a part of the process of government as are Parliament, the executive and any other part of government. It is incumbent on members of Parliament to show that proper respect. We should not therefore use these political rants as an opportunity to undermine the public's confidence in the courts.

[Member's time extended.]

Mr W.J. JOHNSTON: It is interesting to note that not long after I was elected I received in the mail a study done by—I think it was—an academic at the University of Tasmania. Those researching the study had access to juries. After a trial at which a person had been convicted the researchers provided the juries with an opportunity to set a sentence for the convicted person. Of course that was for no other reason than research. The study did not have any impact on the trial and was done in such a way to ensure that the juries were not aware of the actual decision and sentence handed down by the judge. It was interesting to note that in the overwhelming majority of cases the jury actually set a lesser sentence than the sentence the judge set in practice for the convicted person in those trials. Sometimes I am shocked at the decision of judges and do not quite understand why they have made a decision; but of course I have not been present for the hearing of the case. One obligation on the government, of course, is to defend the decisions of a judge because, unlike everybody else in the community, if the government disagrees with the judge's decision, it and it alone has the capacity to appeal. It and it alone has the ability to have that decision reviewed. There is therefore an obligation on ministers and others to tell the truth in the community. So, when a judge makes a decision that the community does not understand, the members of the government have two options: they can defend the decision or they can appeal the decision—I am talking about the sentence, not the conviction.

It is surprising to note how few appeals there are. I have spoken in this Parliament previously about a woman who came to see me about another issue that relates to the administration of government in the justice system—that is, the downgrading of charges. The particular matter does not bear directly on the issues we are dealing with today; it was about her husband being killed by another person. But the point I raised in that matter and I raise again today is one matter that the government alone has control over. When I use the term "government", I mean the whole of the executive—the whole of that arm of the three tiers of government outside the Parliament and outside the courts. It is the administration of the executive, if you like. That matter that the government alone has control over is when charges are downgraded and trade-offs are made. We saw that in the minimum sentences for people who assault police officers. The reports I have read in the media lately say that the police are not proceeding with the same number of charges that applied before minimum mandatory sentences were introduced into that area. I would not want to see the introduction of minimum mandatory sentencing in the Road Traffic Act to lead to less serious charges brought forward by the government for people involved in those serious crashes. I hope therefore that we do not have another example of where the government "speaks stickly and carries a big soft", which is what happened with the mandatory sentencing for assaults against police officers.

Mr M.P. Whitely interjected.

Mr W.J. JOHNSTON: That is as opposed to speaking softly and carrying a big stick, member for Bassendean.

Mr M.P. Whitely: Yes. I am familiar with that one but I wasn't quite as familiar with your original statement.

Mr W.J. JOHNSTON: Yes. Speak stickly and carry a big soft was the quote about President Jimmy Carter by Ronald Reagan in the 1980 election campaign.

It is easy to do the political thing; it is hard to do the real work. It will therefore be interesting to see the minister's response to a number of the issues that have been raised. I do think that just because the minister has said she has done something does not mean she has; and just because she says an issue is one way does not make it that way. So I am really, really interested, minister, in some assurance that the introduction of these minimum sentences will make a difference. If in fact the member for Midland is right that there is no example of a sentence handed down by a court in Western Australia that is below the minimum sentence that this bill provides for, that is something we should know about. I would also like to hear a clear explanation of the issues raised by the member for Mindarie. Simply asserting across the chamber that the learned and experienced jurist, the member for Mindarie, is wrong because the minister says so is not an answer. I would also like some assurance that there will not be a downgrading of charges that are brought under the Road Traffic Act because of the introduction of minimum sentences, as has happened with mandatory minimum sentences for people who assault police officers.

MR M.P. WHITELY (Bassendean) [5.06 pm]: I will be very brief. I will try to keep this speech under five minutes, minister. I will not go through all the issues that have been raised by my colleagues on this side on the Road Traffic (Miscellaneous Amendments) Bill. I think they have raised some very good points. I do think we need to question whether this legislation will have any effect. The prime issue raised by the member for Midland on whether any case has occurred in which a sentence of less than the mandatory minimum was not imposed is a very relevant question. The other issue raised by the member for Forrestfield was about whether the minister thinks that the sorts of people who do these actions really consider the consequences when they engage in these

actions. What I am more interested in is whether something productive will come out of this debate. I was hoping the minister would be available to hear what I was about to say because I am trying to be brief, minister.

Mrs L.M. Harvey interjected.

Mr M.P. WHITELY: I would welcome an interjection that promises to give an undertaking to provide the sorts of information I am seeking.

I really just want to know the causes and circumstances of these sorts of chases. I think if we understood those things, we might be able to do something that is not just window-dressing but actually buries down into what we can do to address these problems. I presume, and I am only going on instinct, that most of these offences involve stolen vehicles. Perhaps they do not. Perhaps they involve people evading police in their own vehicles. I presume there is a high degree of drug and alcohol abuse involved when people are apprehended for these offences. I would like to know what proportion of people have in them an unacceptable level of drugs and alcohol, both illicit drugs and also diverted prescription drugs. For reasons that I have raised many times in this house, I think we have a huge problem with illicit drugs in this state, but we also have a huge problem with the diversion of prescription drugs. I would also like to know something about the age —

Mrs L.M. Harvey interjected.

Mr M.P. WHITELY: I will be brief, minister. I would also like to know something about the age, the driving history, the licence status and the consequences that have come about for the people who have been involved in these cases in the past. Just having another bill to window-dress an issue to pretend that we are doing something does not really achieve much. I do not have a problem with people who engage in these sorts of activities getting a minimum jail sentence of 12 months, although I think it is probably unnecessary because, as the member for Midland pointed out, that probably already happens. I certainly do not have a problem with beefing up protections for police officers. In that sense, I do not have any fundamental objection to the bill. However, I have a fundamental objection to window-dressing without addressing the fundamental causes. Therefore, I would like it if the minister could provide some information about the circumstances of these cases, such as the proportion of vehicles that is the offender's own vehicle and the proportion that is stolen, the age and demographics of the drivers, whether the offender had drugs and/or alcohol on board when they were driving, their driving history and their licence status, so that we can get some understanding of what the hell is going on and can do something that will address the problem. That is all I wanted to say, and if the minister could provide that information at some stage, perhaps in her response —

Mrs L.M. Harvey: With the systems that we have, to get the information that you want, we need to go through both the court system and the police system for recording offences and then the convictions that result from those offences. What I can tell you is that in examining 139 offences for people who fled, out of police pursuits between September and March, of those people, 108 had previous charges. For the vast majority of these people who are pulled over for traffic stops, the reasons that they flee are many and varied but, generally speaking, they're not fleeing because they are panicking because the police have pulled them over; they're fleeing because they have no drivers' licences, they have prior convictions, they have criminal convictions, they are under the influence of drugs or alcohol—a whole range of issues. Around 3 000 people are charged with these offences per year, out of 1.6 million licence holders, to give you an idea of the cohort that we're dealing with.

Mr M.P. WHITELY: That is a good start, and I invite that sort of information in greater detail in either the minister's second reading response or consideration in detail. Then we will be able to get some understanding of what the hell is going on and perhaps can collectively use our intellects to develop some solutions that may save lives and protect the public of Western Australia.

DR A.D. BUTI (Armadale) [5.12 pm]: I rise to talk about the Road Traffic (Miscellaneous Amendments) Bill 2012. The whole issue of police pursuits, car accidents and deaths on the roads, of course, is a major concern for all of us in this place and society in general. On a personal note, I graduated from Kelmscott high school and within two years of leaving high school, 10 to 12 student colleagues from my year, the year above and the year below, had died in car accidents, many of them on Brookton Highway. As far as I am aware, none of them involved police pursuits, but I am fully aware of and sensitive to the whole issue of people dying on the roads. It is a terrible situation and this bill tries to address a particular part of the problem; namely, people who drive in a dangerous manner and try to flee police pursuits. I do not think that many people would deny that that remains a problem, and we should try to do something to address it. Other members have spoken about the merits of the bill and we will deal with that more in consideration in detail.

The bill seeks to do two main things, from my understanding and the second reading speech: first, to provide some protection to police officers in regards to police pursuits and, second, to bring in harsher and also

mandatory penalties or incarceration for certain offences. I, like my colleague the member for Forrestfield, as a matter of principle, oppose mandatory sentencing. I still oppose mandatory sentencing in this bill, but in effect those provisions probably will not make any difference because the sentences people currently receive for fleeing a police pursuit, from my understanding, are consistent with the mandatory penalties imposed in the bill. As a concept, as a principle, and as a lawyer, I believe that we should really, really be careful about a continual erosion of judicial discretion and independence. By all means, increase minimum penalties and maximum penalties, but I remain opposed to the mandatory element. However, as I stated, the effect of the mandatory sentencing provisions in this bill will have no practical effect because the penalties available now at the discretion of the judge, as far as I am aware, have always been at least at the minimum level proposed in this bill.

I think it is important to provide protection to police officers involved in pursuits. It must be incredibly difficult for police officers to decide whether they will engage in a high-speed car pursuit. This debate has gone on for many, many years. I know that the Commissioner of Police has certain policies in place about when and where officers can and cannot engage in a high-speed pursuit. It must be very difficult for police to decide when they should and should not engage in a high-speed pursuit. It seems incredibly unfair that police may be liable for an offence in seeking to comply with their obligation to prevent crimes taking place or to track down people who have committed crimes. But, of course, there is the bigger issue about the safety of not only the public, but also the police and the people they pursue. It is difficult to have sympathy for people who drive in a dangerous manner away from a police pursuit; I have very little sympathy, if any, for those people. However, the problem, as we all know, is that many innocent people are killed as a result of those pursuits. I am talking about not only the people in the car that is being pursued, but also innocent people. The member for Cannington mentioned the recent incident with the English doctor who had just left the airport, which was not a car pursuit but there was a helicopter overhead. I am interested to know, in that situation, if a helicopter is overhead monitoring a car, whether that is a car pursuit. I do not think that under this legislation it would be, if it is just monitoring a car. I am interested in the minister's view on that, because my understanding is that in that situation the police were following or nearby, but they were not engaged in a high-speed pursuit of the stolen vehicle and a helicopter was above tracking the stolen car.

An interesting part of the bill is the so-called circumstances of aggravation. That took my notice because, only in the last parliamentary session, the opposition introduced and debated a bill that involved circumstances of aggravation; that is, the Criminal Code Amendment (Domestic Violence) Bill, in which we proposed that under circumstances of aggravation, the maximum penalty for unlawful assault causing death in a domestic violence situation be increased from 10 to 20 years. The government decided to vote that legislation down. I am interested in the minister's view on that, because she made statements shortly after becoming the minister that domestic violence was one of her major priorities. I want to know why the minister voted down such a bill but now sees it as appropriate to have provisions in this bill to deal with circumstances of aggravation. Is it because this situation is hot in the public and the government will receive public mileage out of being seen to be doing something, and maybe domestic violence was not as hot in the public? It would be interesting to know why the minister saw this bill as a rational reaction to a concern, which she has identified, about police car pursuits, but did not see the circumstances of aggravation in the domestic violence bill as appropriate. I welcome the minister's interjections, but I fear that her silence in this matter tells me a lot in regards to her role as police minister since she has taken over, in that she introduces legislation at the drop of a hat when there is a political demand for it, which sometimes may have merit—this case probably does have merit—but in other circumstances, which also have merit, she refuses to support legislation.

Members on this side, including my colleague the member for Forrestfield, made the observation that in many respects increasing the penalties may not deter the people who engage in high-speed car pursuits—and that is true: there are some people in society who just love the buzz and the adrenaline that come from trying to out-race the police. But there is justification in increasing penalties even if they may not act as a deterrent. There is no doubt that increased penalties do act as a deterrent for most of the population, but, of course, in this situation we are dealing with many people who act in an irrational manner and they will not be deterred no matter the degree of penalties. That does not mean that penalties should not be increased. But even if increased penalties do not act as a deterrent, there is a justice issue: it is a justice issue for the innocent victims. If an innocent bystander dies as a result of a car pursuit, there is a justice element for their family in the penalty imposed. Even though the penalties may not deter the frequency of car pursuits, there is a justice element that the law seeks to comply with. However, we need to be careful that we do not take that justice issue too far, because some people, of course, argue that penalties should be far greater than one would rationally concede. Therefore, one has to be careful how far we take the justice issue, but we do have to consider the justice element to any legislation before us. So, there is a justice element, there is a deterrent element and there is an element of considering whether behaviour will change once a person is convicted. Will sentencing someone to jail change their behaviour? For some

people, unfortunately, it will not change their behaviour. That does not mean that we should not have incarceration, but we must look at other policies and other ways to seek to change behaviour besides imposing harsher penalties—not that they should not be imposed.

I turn now to the policy issue in regards to police pursuits. Yes, generally the public wants criminals to be apprehended, but there is a discussion occurring among the public about whether high-speed police car pursuits should be entered into. As I said, this issue has been with us for many, many years. There was a story in 2010 on *The 7.30 Report* on the issue of police pursuits, which was the result of a Queensland coronial report. The report handed down by the Queensland Coroner warned that police pursuits were often very dangerous and could end in fatality. I will quote from part of the transcript. The reporter is Deborah Cornwall. She refers to a person called Ross Dunn, who said —

> … Every time I hear a siren the hair on the back of my neck stands up and I am transported immediately back to that night.

This involved a police fatality —

> IAN LEAVERS, QUEENSLAND POLICE UNION: Do you just let criminals have their way and go and commit criminal acts and have anarchy out there or do you have to try and enforce the law?
>
> DEBORAH CORNWALL, REPORTER: It's the extreme end of policing—the sanctioned high speed chase to catch the crooks, with a one in ten chance it will end in a spectacular crash and sometimes death of an innocent bystander.

Another person said —

> … The police car is the deadliest weapon in the police arsenal. It is much more deadly than guns.
>
> BOB ATKINSON, QUEENSLAND POLICE COMMISSIONER: It is one of the most complex and arguably the most complex and difficult task that we give our police officers to do.

Ian Leavers from the union then said —

> … Police don't have a crystal ball and they need to be given latitude to be able to make the decision and do the best they can. It's not an easy decision to make.
>
> …
>
> DEBORAH CORNWALL: Given the risks, police pursuit appears an extraordinarily dangerous public policy.

She then stated —

> … Up to 97 per cent of police chases involve only minor crimes—mostly traffic infringements and suspected car theft but public surveys repeatedly show that it is the community—even more than police —that support high speed pursuits, no matter what the crime.

However, this was 2010, and I understand that the police commissioner has policies in place about when high-speed car pursuits can and cannot be engaged in. I think that in most cases it is for minor crimes, and, if it is, that definitely should be changed. As a result of the fact that this is an incredibly complex issue, and it is a very complex and immediate decision that the police have to make, it is to be applauded that the legislation seeks to provide protection to the police. However, as the member for Mindarie stated in regards to proposed section 61A of the bill, and the issue of reverse onus of proof, it will be interesting to hear the minister's response to that issue, because she appeared to disagree with the member for Mindarie. We will leave that to the minister's response and consideration in detail. The fact remains that I would like to know—this was alluded to by the member for Bassendean—what other measures are being put in place to try to alleviate the situation of high-speed car pursuits and the fact that people seek to flee the police. I do not have the statistics—I imagine the minister would have these statistics—but of the people who have been involved in car pursuits, what is the average age of the drivers and passengers? I would be confident to say that it is quite a young age, which, of course, heightens the danger, because, as we know, young drivers are not as experienced and are not as skilled. It would be interesting to know the statistics in that respect. The fact is that young people are more prone to high-risk activity, so if there is a police car pursuit, it may encourage them to keep driving in a dangerous and high-speed manner. This then goes back to the question of whether we should have high-speed police car pursuits. I would never advocate that there should never be the ability for the police to engage in high-speed car pursuits—obviously, they need that ability and power—but I think we really need to look at the frequency of high-speed car pursuits. We need to look at measures other than just bringing in legislation, even though this legislation in many respects has merit. It seems to be the general pattern of this government that once there is a political outcry

or what is perceived as a political problem, we rush in legislation—but what else can we do? I am interested to hear from the minister what else she has planned to try to alleviate the causes of people fleeing the police.

As the member for Forrestfield has mentioned, certain sections of the community will unfortunately not pay any respect or change any of their behaviour as a result of this legislation, and I do not think the minister or the government can actually do much about them—unfortunately. But as a result of that, maybe the government and the police commissioner should look at when the police decide to engage in high-speed car pursuits. Eventually the car has to stop. We have sophisticated monitoring systems. The member for Forrestfield mentioned technological answers to these issues. One would hope that we could maybe move more to that sphere, which would be less dangerous and probably be more successful than the current situation in which unfortunately far too many deaths result from high-speed car pursuits and, even worse, far too many innocent bystanders die as a result of car pursuits.

What about the poor police who are involved in those car pursuits and see a death? Perhaps their car actually hits another vehicle and someone dies, as I think happened in the Morley case. The trauma that the police officers have to live with is enormous. This legislation of itself provides some legal protection from prosecution for the police. I acknowledge the concerns that the member for Mindarie has mentioned. The government, working with the police commissioner, has to do more to provide the appropriate support for the police when that happens. We as a community, and particularly the government, have to come up with a much more sophisticated policy matrix than just imposing legislation. Legislation on its own will not solve this curse and this problem that we have in society.

MR T.G. STEPHENS (Pilbara) [5.21 pm]: I will not take up much of the house's time in the debate on the Road Traffic (Miscellaneous Amendments) Bill 2012, but I was particularly interested in the contribution by the member for Bassendean and the exchange that took place when the minister responded in some detail about the sorts of incidents that, at least in the mind of the government, have justified the introduction of this bill. In my own part of the world I have not really focused on police high-speed pursuits, other than the occasional circumstance I have become aware of that relates most frequently to people trying to get away from police officers because they have been driving without a driver's licence, which places many people within the community at risk when it occurs. The government has responded in this case with a statute to go on the books that will somehow be the necessary response to fix the sorts of circumstances when drivers drive without licences and then, when at risk of being caught, speed off and find themselves in a high-speed police chase. Additional weaponry could be on offer to help reduce the incidence of high-speed police chases, particularly in the regional areas where I have spent my parliamentary years—that is, to really focus on tackling the absence of drivers' licences, which lead many people to be driving illegally and getting caught up in driving vehicles without licences.

Increasingly in remote communities of regional Western Australia it is extremely difficult to get a motor vehicle driver's licence. Too frequently, members of these communities give up on ever thinking that they will be able to get a motor vehicle driver's licence. Despite that, mobility is necessary for survival in these places. There are regional towns now that have whole networks of bush tracks running parallel to the gazetted roads and bitumen highways where unlicensed drivers in regional Western Australia often pursue the necessary movements of vehicles that are essential for life and survival without even having a driver's licence. In many cases they are trying to avoid the roads on which they could easily be charged for what is a serious offence. Too frequently these bush tracks—the goat tracks, the dirt tracks—require people to cross bitumen roads. When they do that, they place themselves at risk of being caught travelling on a public road, and there are serious charges associated with driving without a driver's licence.

In a state as big as ours, there is a problem with trying to legislate and do things that make sense in the metropolitan area that wreak absolute havoc in the regional and remote parts of Western Australia, where people's circumstances are very different and their access to things like driver's licences or the education to even access them or the people who will supervise the motor vehicle driver's licence programs are simply beyond the reach of very many. My contribution to the debate is to say to the minister that I know steps are being taken to increase the penetration of training programs and give people access to motor vehicle drivers' licences. There is not only the increased work that police officers do in some of these remote communities; I have also watched the arrival of mobile DPI officers who are now out on the roads trying to deliver motor vehicle driver programs to regional and remote communities. However, in my view, more needs to be done to ensure that driving licences are on offer for as many people as those who need them in these very difficult and remote locations.

The member for Mandurah will appreciate how difficult it is in a place as remote as Kiwirrkurra, which he visited as a minister, to access the standard services that people want to access. Members can imagine the challenges of trying to access a motor vehicle driver's licence out in Kiwirrkurra. The temptation for people in

places like that is to give up, yet they need to be on the roads to take people to hospital or to court appearances and to do the shopping. They are driving without a driver's licence to take people to court appearances. It is a most bizarre, parallel universe. I was in the Balgo community, with a group of parliamentarians, in fact, and a Magistrates Court case was in progress. The magistrate was hearing a case in which a chap was charged and convicted for driving a vehicle without a licence. He apologised to the court, walked out of the court, got back in his car and drove off in full view of the magistrate and all the parliamentarians. It is simply a parallel universe; a different planet. It was not malice; it was simply necessity.

Mr J.J.M. Bowler: That's the way life is.

Mr T.G. STEPHENS: In a state like ours, we have an obligation to get out there and be active in making sure that the laws of Western Australia can work practically, even in places like Kiwirrkurra, Balgo and all the other remote communities and towns; otherwise, there is a huge amount of waste and cost resulting from people getting caught up in high-speed pursuits and putting themselves and police officers at risk as they try to avoid being sent to the courts and, potentially, to prison.

I hope that my colleagues who stay on in this place to continue to contribute to the advantage of Western Australia in the long term will appreciate that it is all very well for us to sit in a place like this and draft new laws such as this one, as though it will make some profound impact upon the world that I represent. Members need to know that such bills often do no more than compound the problems in many of these situations. What is needed instead is a dramatic injection of effort to ensure that the police and other officers of government can deliver driver education programs. They need to be out there doing that work as a vital means of delivering good services to the regional areas of Western Australia.

I have been lucky to have had the strong support of communities in those regional areas, particularly in the Kimberley and the Pilbara; I have received embarrassingly generous votes from those communities for all of my parliamentary career. Community after community has voted almost 100 per cent for me as a Labor candidate.

Mr J.J.M. Bowler: And the goldfields?

Mr T.G. STEPHENS: For good Labor candidates in the goldfields!

We have been very fortunate in our relationships with the Aboriginal community, and it is incumbent upon people like me who represent those areas to say to the minister and the government that a huge effort is needed in this field to accelerate the penetration of motor vehicle drivers' licences into those remote locations. These are good people; they are entitled to be connected to the economic prosperity and development of this state. They are entitled to take their place and walk tall, and to drive proudly, if they could only gain access to motor vehicle drivers' licences through programs that are accessible and meaningful to their circumstances.

I take this opportunity to say to those communities how grateful I am for their support; they have put me in this Parliament to contribute to debates like this. One cannot help but feel enormously unequal to the size of the challenge that is presented by those remote areas, and how minimal the progress has been over the last 30 years. It is necessary for fresh energies to arrive in this place to take up these battles, win victories and extract resources from the current and future governments to advance the interests and needs of the residents of those regional communities of Western Australia. In expressing my appreciation to those communities, I hope that I will get the opportunity between now and 9 March 2013 to visit many of them and express my appreciation personally. I refer to places like Kiwirrkurra, where drivers' licences are rare—Kunawarratji, Punmu, Parnngurr, Warralong, Strelley and Youngaleena. These are places where Western Australians live in sufficient numbers to justify the real focus on their needs that would come from delivering significant motor vehicle driver training programs. These are the communities that I currently represent; there are also communities that I represented in the past, such as Wirrimanu, Mulan, Mindibungu, Warmun, Kalumburu and Bow River. Then there are the Miriuwung and Gajerrong communities, the Gidja peoples and the Woolajah people. These are communities that have provided me with enormous support throughout my parliamentary career, yet their need for a simple thing like a driver's licence has made life increasingly difficult for them. It is almost inaccessible, in many cases, sometimes as a direct consequence of legislative changes that have come about through successive governments, including ones of which I have been a part and ones from the other side of politics. It is far too easy in this state to just assume that we have a monochromatic culture. We make laws that may meet the needs of, provide benefits to and protect the people of metropolitan Perth, but we then assume that somehow or other the rest of the state will pick up advantages from Perth-centric legislation. This state does not work that way. We have so many different sets of circumstances that it is almost hard to imagine another jurisdiction on the planet that has circumstances that differ as greatly as those in Peppermint Grove from those in Kiwirrkurra; yet a bill such as this lands in this Parliament and becomes a statute, as though that will fix all the problems. It will not warn off barristers, as they drive home to Peppermint Grove, from speeding away from a police officer, while simultaneously warning a

member of the Kiwirrkurra community to not run away from a police officer, because if they are caught, they will run the risk of a jail sentence.

We need to do more than enact legislation such as this. We require more focus and more funding than has been on offer from this government for the areas that I represent. Yes, some good things are happening, but more needs to happen. I represent the Pilbara region. Vast amounts of money flow into the coffers of ministers, such as the current Minister for Police, from that region, for the benefit of all Western Australians; yet something as basic as access to a driver's licence is still so incredibly problematic. Some of these places are not even that remote. Warralong is not too difficult to get to, yet the number of drivers' licences there would be tiny. The number in Strelley would also be tiny. When we go to these places, we see a parallel universe where people are driving off-road to avoid contact with police officers, because contact with police officers can lead too quickly to unlicensed drivers finding themselves heading towards prison.

My plea is to the house and the government to double the effort. We on this side of the house can be very proud of the fact that we have delivered some quality police stations to the remote communities of Western Australia, but they need to be supported to make sure that they can deliver a substantial increase in access to drivers' licences to the communities where they are located as well as the neighbouring communities. There is good work being done—like at Jigalong; I notice some quality work being done there by the new officers, as was done by the previous officers, in trying to help the penetration of motor vehicle drivers' licences. Without the resourcing from government that is necessary for the police department for those programs, it is simply a huge task that will not be addressed. I commend to the minister and the government the need to spend in this area, because if they do not spend on the education programs necessary to access drivers' licences, they will end up spending with a futile waste of money in the court system and the prison system into which these unlicensed drivers are simply delivered through mandatory imprisonment. People occupy prison beds at a cost of 100 000 bucks a year, when their pathway away from prison into useful employment could have been secured by the investment of a small amount of money to bolster the capacity of police officers in these remote areas.

With those few thoughts, I will leave the rest of the debate to my colleagues.

MR P. PAPALIA (Warnbro) [5.50 pm]: The member for Pilbara indicated that he feels inadequate at times regarding his efforts to assist his constituents, but I always feel inadequate when I follow in his footsteps. He is a great orator and he has been a great member of Parliament and has contributed greatly to his constituents. He should not fear in that regard.

I want to make a really short contribution to the Road Traffic (Miscellaneous Amendments) Bill 2012. Like everyone in this house, I support some long-overdue action to offer protection to police officers who are engaged in urgent duty driving. That goes without saying. However, having listened intently to the member for Mindarie, I now have some concerns about whether this legislation is an improvement—I am unsure it is "an" improvement—or whether it will make life a little harder in some respects for those officers who engage in urgent duty driving and somehow come to grief as a consequence of that duty. Shifting the burden of proof to them is of concern, and I look forward to the discussion with the minister in consideration in detail in that regard.

The main reason I stood to make a contribution is that I want to place on the record the cynicism with which I view the nature of this legislation and the manner in which it has been introduced. The potential flaws identified by the shadow Attorney General go some way to raising a flag and giving us an indication of the real nature of this legislation. It is easy to forget. Sadly, the media in Western Australia are prone to forgetting anything past about last Wednesday. We can go back to April this year and look at the chain of events that began this process. That chain of events began with the death of a woman named Sharon Ann D'Ercole in April this year when a police vehicle slammed into her car while chasing a stolen Audi in Dianella. That is what began this process. I know that the Western Australian Police Union had been seeking legislation to provide these types of protections before that time, but I am talking about what began the process for this government this year. That incident drew attention to the dangers encountered by the public and by police when there is a high-speed pursuit, but also when there is any other urgent duty driving. That happened in April. What then happened? Nothing really, until the police union had its meeting in June. In June at the police union conference, members voted unanimously to institute a ban on high-speed pursuits from 1 October if legislation had not been introduced by the state government to provide some protections for police officers engaged in urgent duty driving. It was unanimous as reported in *The West Australian* of 26 June 2012. An overwhelming majority of the state's 6 000 police officers are members of the union, and the conference representatives voted unanimously. That initiated some sort of action from the government. The Premier spoke at that conference. He said that he could recognise the need for some legislation. In response to the demand that legislation be introduced by 1 October—bearing in mind that we are well past that date now—the then police minister is reported to have said —

> "Certainly the intention is to introduce the legislation when we come back from the winter break and I would call on the Opposition to give absolute support to give this a very rapid passage through parliament."

Dean Emerson went on in the article to say —

> Mr Johnson said the pursuit legislation would be given priority over additional proposed laws to increase the power of police to break up rowdy parties but he wanted to introduce both to parliament soon after its six-week winter recess.

What happened? We returned from the six-week recess without that particular minister. We got a new minister and what happened to the pledge to introduce the legislation as a priority? It went down the priority list, below the out-of-control party legislation. There was no explanation as to why that should occur, other than there was a change of minister. But the new minister was not forthcoming with an explanation as to why legislation to protect police officers engaged in urgent duty driving was somehow less important than out-of-control party legislation. It probably had something to do with whatever was on the Sunday news on television that week. That is probably the driving cause of the change in priorities. But the police of the state were never afforded an explanation by the Premier or the minister. The out-of-control party legislation came in with what some might have assumed were additional onerous components attached to it in an effort to attract some negative response from the opposition. But we saw that as the purely transparent political ploy that it was and, instead of opposing it, chose to allow it to go through and to allow it to fail this Christmas, so that whenever there is an out-of-control party this Christmas, everyone will know that it was the Barnett government that failed to deal with it. That is what has happened. That is why we let that legislation go through. It was poor legislation, but that is okay, because the Premier will wear the consequences. It will be the Barnett government's responsibility when the next out-of-control party occurs and is not dealt with by its legislation.

That aside, we did not get an explanation as to why protecting our police officers was somehow less important than the out-of-control party legislation until some tragic events occurred. On 19 October, there was another terrible crash involving a vehicle trying to avoid police and the notorious crash in which the taxidriver and an English scientist were tragically killed. Then somehow rapidly the protection of police became an important matter again. The legislation then became very important. The police minister responded to urging from the police union and told us that we would get the legislation. A report in PerthNow on 19 October states —

> WA Police Union president George Tilbury extended his sympathy to the families after this morning's tragedy and demanded new pursuit laws to protect police and innocent community members as a matter of urgency

Of course, the union had been saying that for a long time. He had been saying it since April. But now he was finally getting heard in the offices of the police minister and the Premier. The article went on —

> "We have been working with the government for some time and we do need legislation that does act as a deterrent and makes offenders stop," Mr Tilbury said.
>
> "We want to see legislation introduced that has a term of mandatory imprisonment for any offenders that fail to stop for police and put innocent lives at risk.

I want to focus a little on that, and I will when we return from the dinner break. I will go to that point because there is reason to consider the nature of this particular response by the police union and the response by the government and the discussion in the public domain.

Sitting suspended from 6.00 to 7.00 pm

Mr P. PAPALIA: Before the dinner break I reviewed the recent history of this legislation. It began with the tragic death of a mother of three in April. The police union had been calling for some time for legislation to protect its members during urgent duty driving, but the government had completely ignored that call from the police union and became obsessed or tied up with its own internal issues and the change of minister. The government subsequently chose to again snub the police of this state and to ignore the call for protection for police engaged in these types of duties when it broke the commitment that had been given by the previous minister to make this the number one priority and instead elevated the partying legislation above this legislation. Having reviewed that process, which was again imbued with some urgency at the time of another tragic incident in which a taxidriver and a British scientist were killed, I would now like to make a couple of observations.

Firstly, in relation to the way in which the government generally behaves with anything to do with crime and punishment in this state, it is, as I think I have said before, a one-trick pony—and the pony is lame. On every single occasion that this government is confronted with a small challenge in the field of antisocial behaviour or

criminal activity by a group or a cohort within the community or a type of incident, which in this case is high-speed pursuits, it rolls out a standard, predictable and ultimately futile response—the police minister of the day, whomever that happens to be, will walk out to the media, pound their chest and declare to the world that they are the toughest minister who has been responsible for this portfolio in the history of mankind and that they are going to get tough on this crime, whatever it is. Whatever is the latest challenge confronting the Barnett government, that is what they will declare. They will then proceed to introduce in this place legislation that imposes additional penalties, invariably for a law that already exists. They will publicly claim that the courts are not reflecting the wishes of the people and are not acting in a manner that is a deterrent to people committing these crimes and that they are therefore compelled to get tougher. Increasingly, it appears, they will link it to an effort to impose a mandatory sentence, and thereby reduce the ability of members of the judiciary to exercise their discretion. It is cheap. It is not justified in most cases. In this particular case, as has been indicated by a number of speakers on this side, we could not see where a person in this situation would ever not deserve to be in prison; therefore, it could be argued that it is justified. However, the point I am making is that it is a formulaic response and it does not call upon evidence to justify the path that they pursue. If it were the case that the individuals we are talking about were going to, for one moment, pause and reflect upon the potential penalties for their crime in the event that they were caught and then contemplate that they might get a higher penalty than would otherwise be the case and then decide that they would not do the crime, it could be said that this is an effective path. But it is not. They would not pause and reflect. Invariably, we will see the same sort of response that has been pursued by this government for four years now.

It is not as though the intent of the government is to actually achieve a positive outcome. Government members might tell themselves that. They might rationalise it within the party room. They could certainly try to justify their course of action in the public domain, particularly in the event of high-profile incidents that capture the imagination and anger of the public and lead to demands for outcomes. In reality, when it is used so frequently, it demeans the currency. When it is the only thing the government does, it reduces the believability. People ultimately will tire of the same old response and they will see through it. It is so transparent that even in the absence of any real analysis by the media in Western Australia, in most cases people will ultimately get tired of it. They will say, “All the Barnett government does is to introduce more laws”. The Barnett government is the world’s champion law introducer. It is the toughest law introducer in the country, but it does not have credibility when we consider whether it is actually going to make any progress. When we consider whether what this government is introducing will improve society and will have a positive impact, we have got to say that, over time, it is highly unlikely, and we then have to question its motivation. That is the government.

The other observation I would like to make, and I indicated earlier that I would go to this, is about the response of the police union in the course of the past four years as I have witnessed it in this Parliament. I was in government for 18 months as a backbencher prior to the last election.

[Member’s time extended.]

Mr P. PAPALIA: I entered this Parliament as a member of the opposition and was greeted very early on by the scene of many thousands of police officers standing out the front of the Parliament and being urged by the then police union president, Mike Dean, in quite strident terms to demand outcomes of the Parliament and to demand that members of Parliament pass mandatory sentencing at that time, or else. He said to the crowd, through a microphone, as recorded in the media, “We know where you live”. Some members of my family are in the police. I have extended family members who are in the police. I have great respect for the police. A lot of my mates, former military people with whom I served, have now gone on to serve the nation and the state in the uniform of the Western Australia Police. I would say to the Western Australian Police Union of Workers, to its current president, George Tilbury, and to other police union members, to consider what they say and do and the path that they choose to walk down, particularly in the lead-up to the next election. It is not in the interests of the state or indeed police officers; it is not in any of our interests to have members of the police force of Western Australia attempting to impose their will inappropriately on members of Parliament in order compel an outcome that the leadership in the union may have determined is the appropriate one for them for whatever particular outcome they are seeking to achieve at that time or on that date. I say that because I have watched with interest some other cases around the country that arose in response to the situation here, in which thousands of police officers demanded mandatory sentencing and then had that law passed in the Parliament. That issue has moved around the nation and I have watched other unions demand mandatory sentencing. Although I could easily make the suggestion that in Western Australia it may have had more to do with police union elections than with benefitting police, it was transparently obvious that in some other states where they began to demand mandatory sentencing it was part of the internal politics of police unions in those states. It is appropriate that we consider the negative consequences if laws are drafted in this place as a part of a populist response or a populist

manipulation of circumstances—tragic though they may be—and utilising the wider political circumstances inside and outside this place, and that becomes the driver rather than whether or not the law is appropriate or effective or will have negative consequences. If we question that approach, that scepticism or that attitude, then let us cast our minds back a little bit to what happened following the mandatory sentencing laws being passed in Western Australia. Subsequently to that, there were a number of incidents in Western Australia in which police officers encountered members of the public who were subsequently charged with assault on the police officers, and had it not been for the fact that there was additional evidence through CCTV footage those people would have unfairly and wrongly been imprisoned as a consequence of that legislation that we passed through this house under duress, to some extent, through the political action by the police on the steps of this Parliament.

The reason I say that this is not in the interests of Western Australians is because I am firmly of the belief that our freedoms are the greatest treasure that any of us possess, and the people of this nation have benefitted from the sacrifices of a great many generations to defend those freedoms. We should not sacrifice those freedoms on the altar of short-term political gain. That goes for people in the politics of the current government and also for the leadership of police unions or people outside this place. Ultimately, police should consider that constantly criticising members of the judiciary and their determinations, and arguing that we should impose mandatory sentencing and thereby reduce or diminish the discretion of the judiciary will mean that police officers will not benefit from judicial discretion. There will come a time, if we continue to erode judicial discretion, when a police officer or police officers will suffer. They will be the ones who are placed in that position and were it not for judicial discretion, they might be incarcerated inappropriately or wrongly.

I conclude by saying that I wanted to make those two points and I will seek to elicit from the minister during the consideration in detail stage just how much work has been done to confirm that this is not another standard response that has been rolled out for something that looked a little bit tough or to cover up the fact that the government took so many months to respond to the police union in the first place or to that tragic circumstance in April.

Dr K.D. Hames: Is it not true that your side is supporting this legislation?

Mr P. PAPALIA: Yes, we are.

Dr K.D. Hames: You wouldn't think so from this speech.

Mr P. PAPALIA: That is the point exactly! The minister is suggesting that there cannot be any consideration of this legislation and that somehow it is sacrosanct because it was introduced into this place under the guise of responding to the incident back in April, which the government should have responded to then. If this bill is so important that we cannot debate it, why did the government not introduce it before June? Why was the out-of-control party legislation so important that it leapt above this bill in priority?

Dr K.D. Hames: I'm surprised you're speaking against it when your party supports it!

Mr P. PAPALIA: I am not speaking against it, minister; I am talking about it. I am discussing the bill, and I am raising with the Minister for Police the flaws in this government's behaviour. For over four years now this has been a standard response from members opposite. On this occasion, there may be some benefit from this legislation and it may be appropriate that additional penalties have been introduced and the mandatory component may not be wrong, but I am talking about the pattern of behaviour that it reveals. This is so close to the standard response that the government rolls out almost every time it is confronted with a situation in which some minister has embarrassed themself and the government needs to roll out some diversion; this is the sort of thing the government does. In this case, there was an embarrassing situation, because the incident that drove the initial threat to ban high-speed chases by the police happened in April; then the deadline for the bill's passage through Parliament was set for 1 October. It is 6 November! The bill was not urgently brought in here. It was brought in here reluctantly and slowly; and, unfortunately for the government, it was brought in in much the same way as the government responds when a minister embarrasses themself or there is an embarrassing situation, so it demeans the currency.

Mrs L.M. Harvey: Why did the union extend the deadline?

Mr P. PAPALIA: I have no idea; the minister was talking to it.

Mrs L.M. Harvey: Because it was happy with the progress of discussions.

Mr P. PAPALIA: The union extended the deadline because the government would have missed the deadline and they would have stopped high-speed chases, so it would have been a bit embarrassing for the government. I think the police cared more about the safety of the Western Australian public than the minister did. Why did the minster take so long to draft this legislation?

Mrs L.M. Harvey: I was sworn in as minister on 29 June and the legislation is here now.

Mr P. PAPALIA: The government has been in power for four years. The Liberal Party has held power for longer than any party in Western Australian history. Members opposite have had the longest term in government in the history of the state. The incident occurred in April and if the answer to why the government does not do things on time is because it has a new minister, then that will get it through to the next election, I guess, because it just has to keep changing ministers! The reality is that this looks a lot like all the other things the government has done when it has been embarrassed and it has failed to do the right thing. That is why we are discussing the bill. I am very interested in what the member for Mindarie identified as a potential flaw in the legislation.

Dr K.D. Hames: Speaking about doing the right thing, we did have an agreement with your leader of the house that people would be quick in debate—I gather you promised that—and for that reason we would not sit Wednesday night!

The ACTING SPEAKER (Mr P.B. Watson): Minister, if you stop interjecting, we will get done more quickly!

Mr P. PAPALIA: I do not care whether we sit on Wednesday night if we can discuss this legislation in an appropriate fashion.

The ACTING SPEAKER: Member, get back to the bill, please; and, minister, you will have your chance.

Mr P. PAPALIA: It is going to be the way it is! I hope that when the minister is questioned by the shadow Attorney General about the potential flaws in the legislation that she has a response. I hope that the minister is capable of replying to those concerns and allaying those concerns for us, because the member has put a reasonable question to the minister. On the other point I made with respect to the police union, I conclude by saying that I completely support the police. However, I was incredibly offended and frustrated four years ago when we came into this place and people were questioning the Labor Party's support for police officers in such a blatantly political and weak fashion because we were challenging the concept of mandatory sentencing and defending the authority of the judicial system and the ability of the judiciary to exercise discretion. That is defending freedom. That is defending the rights of every Western Australian. It was disgraceful for people to criticise that stance at the time. It is still disgraceful. It is disgraceful for the member for Dawesville to suggest that talking about this legislation is in some way undermining it. If the government wants to introduce legislation in the second-last sitting week of Parliament after an incident occurred in April that demanded legislation at that time and the government was incapable of doing it, government members should sit and listen when we talk about it and answer the questions when we ask them.

MR A.P. O'GORMAN (Joondalup) [7.21 pm]: The intent of the Road Traffic (Miscellaneous Amendments) Bill 2012 is to protect our police officers involved in high-speed pursuits and to make sure that when they are chasing down the bad guys, for want of better words, they are not taken to task because they have done what our community expects them to do, and that is to take people to task. Having said that, we have to be very careful when we put legislation such as this through this place. We have seen it before. It is knee-jerk reaction legislation, if we would like to call it that. A piece of legislation is brought in here really quickly. It is not allowed the appropriate time on the table of the house for people to scrutinise it so that they can make informed comments in the debate in this place. I have issues with how the government brings on legislation: "We have to get it through. We have to get it through this week. We have to have it in the upper house before the end of this week so that it can discuss it and we can have it passed before Parliament prorogues early next year." We are not going to sit after 15 November except for maybe one day to consider Council messages.

We saw problems with the hoon legislation when amendments had to be brought back to this place in a hurry to fix things that were not done properly in the original bill that went through this place. When that hoon legislation was going through this place, the tactic used by the government was again to demonise the Labor opposition. The government said that by challenging the contents of the bill and asking questions about it, we did not support the police officers or our community. The truth of the matter is that our job is to challenge every piece of legislation that comes through this place to make sure that when it hits the streets and people are bound by it, it is the best legislation we could possibly have.

Accepting that this bill has been sitting around since April this year—we all know the incidents that caused this bill to come to light—it was not acted on until the more recent tragic incident with the taxidriver and the new arrival from England. It was a very sad situation. On behalf of this Parliament, I pass on our respects and condolences to all those people who were involved in that. It is something that should not happen in our society, but it does.

We have been asked to pass this bill, in which proposed subsection 61A(1)(b) refers to —

> … 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;

To me that reads like, "Here is an enabling piece of legislation and that piece will be covered under a directive by the commissioner." When we have put other bills through this place, we have often done enabling legislation and the regulations have come in at a later time. When regulations come in under enabling bills, Parliament gets an opportunity to look at those regulations. If deemed unfit for whatever reason, we do not allow them to come into operation. For example, if regulations are not within the intent of the bill, they may be disallowed. The Parliament gets an opportunity to vet the regulations that come in. In this place we have put through many bills to enable regulations. In the past 12 to 18 months we put through a bill on commercial tenancies. The intent of that legislation was to protect tenants in commercial situations. The regulations that should have followed on should have allowed those people to take their disputes to the State Administrative Tribunal. However, because those regulations have not yet been drafted, we will go to the next election without that power. The concern with this bill is that we are now being asked to blindly support a regulation that will not come before this house; it will not be reviewed by this house even when Parliament resumes after the election because it is the commissioner's policies and guidelines. It is not quite a regulation, so we cannot disallow it in this place or the other place. It is a great concern that we are being asked to do something blindly, and it could have unforeseen consequences that will come to light only later down the track. That is about protecting the police officers once they are in a high-speed pursuit situation.

It reminds me of something else; this is not a new phenomenon that has hit us just in the past three or four years. When I was still on the tools down at Curtin University, I had a very good friend called Mark Goldsworthy. He was a refrigeration fitter, but his pastime or hobby was racing motorcycle sidecars up at Wanneroo raceway. We would often ask him why he would not ride his motorbike to work at Curtin University. He said that it was because it was not safe. I said, "But you get out there on the track every weekend and do 200-plus kilometres an hour flying around; surely that is not safe." He said, "It is safer than being on the road." I asked him why, and he said it was because they are all trained. People have to get to a certain level of competency before they can get on that track and crank their bikes up to 200 or 215 kilometres an hour. He said that even then they have accidents. I saw him have a huge spill there one day; it was an accident. One of the drive shafts snapped; the bike flipped over and threw off both him and the passenger. We discussed high-speed chases. This is nearly 20 years ago. This issue has been around for that time. His view was, "I do not know why we do it. I do not know why the police chase these guys." When we are up there at Wanneroo raceway, we are in a controlled environment. Riders are highly trained and skilled. Everybody on the track knows what to do in particular situations and they know their roles. However, when someone is out on the road just riding their motorcycle normally, everyone else around is not trained to that level. When we put high speed into the mix and not one but two cars are travelling at high speed, we increase the risk. We could never figure out the increase in the risk, but just recently I have managed to find someone who has calculated the risk. When a car is coming down Alexander Drive in traffic, as was the case last April, and the traffic is doing somewhere between 60 and 80 kilometres an hour—I think it is 80 kilometres an hour in some spots on Alexander Drive—if someone is really stupid and whizzes through the traffic at 90 to 110 kays, all those other people on the road are not trained for that. They do not know what to do or how to get out of the way.

I live very close to Joondalup Health Campus and I regularly see ambulances coming through the Shenton Avenue–Joondalup Drive traffic lights; people do not know what to do when they hear the sirens. I watch them and I see them freeze. They do not know how to get out of the way. They do all sorts of stupid things. I have seen people turn around and cross the carriageway to get out of the way. People do really silly things. People drive through the red lights. Even if an ambulance is behind a car, that car cannot go through the red lights; it has to move to allow passage for the ambulance to get through. The emergency vehicle has authority to go through if it is deemed safe to do so. But in a high-speed pursuit, some idiot—usually they are idiots—is driving a car recklessly without due care for the other road users, let alone himself. After that car goes past, those people who might have got out of the way start to come back into the road again, and then the police car with the sirens on comes up behind them. For a start, people have to work out where the sirens are coming from, then look behind them and get out of the way of the police car.

As I think has been already said in this place today, police drivers have to achieve a certain level of training before they are allowed to engage in high-speed pursuits; they are highly and well trained. I have seen them doing certain manoeuvres at Barbagallo Raceway and in and around the Police Academy at Joondalup. They are well trained and know how to handle their cars, but there is something they cannot predict—other drivers on the road. It is impossible to predict what other drivers will do, because every single one will do something different. I am asking the minister, given that this legislation has been rushed into—yes, without a doubt, we should be

protecting our police officers—whether any thought has been put into whether some research should be done, such as maybe a cost–benefit analysis, on the benefits of a police chase. The argument can be made that we have to chase the bad guys and we cannot let them get away, because if we let them get away, they win. But are they not winning now? In these high-speed runs, when they get a cop car after them, they love the chase—lots are young men—they manage to get away, they ditch the car if it is a stolen car, and they are away. The chase results in a police officer putting his or her life in danger by going above the speed limit, breaking normal traffic rules and going through red lights to catch somebody because they have stolen a car or done some other criminal activity. The car involved is a bit more than the average car. If somebody is being chased and they have a crash in that car valued at, say, $50 000, the cost of that crash will greatly exceed the dollar value of the car—especially if some of the tragic consequences we have seen in the past 12 or 18 months occur. I ask the minister: has any thought been given to the appropriateness of police pursuits? I do not say that we should not have police pursuits; I say that we should do some research on whether there is a better way.

I now quote from an article that appeared on the WAtoday website; I will not read it all because it is quite a lengthy article. The article reads —

> Earlier this year, Queensland banned pursuits for traffic offences and stolen vehicles.

Therefore, the ban was specifically for traffic offences and stolen vehicles; I assume they still pursue bank robbers or other such cases. The article continues —

> It is early days in that state, but Tasmania claims there has been virtually nil deaths and injuries from police pursuits since they were banned for traffic offences and stolen cars in 1999.
>
> Road safety expert John Lambert has called for a nationwide stop to pursuits involving minor traffic offences or stolen cars.
>
> He has obtained a wealth of research that supports his argument that police chases are not worth the risk or trauma.
>
> He claims the fatality rate when police are involved in an accident is 3500 times the average, and that police vehicles are involved in crashes at about 300 times the level expected in normal traffic.
>
> Mr Lambert says that on top of the trauma, each fatality costs an estimated $2 million in funeral costs, police and coronial investigations, traffic disruptions, ambulances and other associated costs.
>
> The average cost of a pursuit involving a crash is $48,000 while the value of the car being chased probably stolen is likely to be less than half that, according to Mr Lambert.
>
> He also points out that with about 45,000 vehicles stolen each year across Australia, the few that are retrieved via a police pursuit has a minimal impact.
>
> Those being pursued were likely to be young risk takers who were affected by alcohol or drugs and were not experienced drivers.

Taking into account that drugs and alcohol are often involved, we all know that decision-making powers are greatly diminished once a person has drunk alcohol or is under the influence of drugs. Add to that inexperience in high-speed driving and all the unpredictables out there on our roads, it creates a huge risk. I am asking that the minister, as well as bringing in this piece of legislation, at least consider commissioning some research through our experts on the Road Safety Council to see whether this is the best way to be doing it.

The member for Forrestfield earlier mentioned StarChase, which enables a GPS device to be attached to a car to track that vehicle. I think with the technology we have these days and the amount of closed-circuit television used, we can probably watch these people who are, for whatever reason, running around at high speed. We can track them and apprehend them at a safe time, rather than chasing them through densely populated areas while lots of vehicles are on the road. Another quite regular occurrence is people losing control coming around bends at high speed. It has happened in my electorate a number of times. I have seen a skip mini-bin moved across a double driveway, across the front garden and into the front wall of a house, and the guy driving the car got up and drove the car away with a lot of pieces hanging off it.

I support the intent of the bill. I know the minister has come in rather late and is trying to get it through as best she can, but I caution against rushing into Parliament bills that have not been properly thought out and have not taken into account all the parameters that should be considered to make it safer out there on our roads. Ultimately, we want safe roads and we want our police officers to come home every night—or every morning if they are doing night shift—and we want people to be safe on our streets.

MR P.B. WATSON (Albany) [7.37 pm]: I fully support the Road Traffic (Miscellaneous Amendments) Bill 2012, but I do have reservations on some areas of it. I agree that we have to support our police officers, and I noticed that there were 327 such pursuits in 2011–12. I can talk only about the one that happened in Dianella, and I know the policeman has been charged in that case. But I wonder whether our police pursuits system is working properly. Perhaps the minister could tell us during consideration in detail what the process is once a pursuit starts. Who do they have to get permission from? Is there someone who makes that decision right away? Does it have to go up the ladder? What happens if these situations start off as a traffic offence or if someone is in a car with drugs or a gun and does not want to get stopped? Could the minister, by interjection, let me know the process? I will give the minister the opportunity in a moment, but at the moment police have to make that split-second decision. They are out there protecting us, they are in a pursuit and they have to get the okay. How long does it take? Do they get it within 10 seconds? Can they increase their speed while they are waiting for the okay? Could the minister let me know what happens?

Mrs L.M. Harvey: That is the purpose of the reference to the commissioner's policies and guidelines. Before officers can engage in a pursuit, they need to be trained in pursuit and emergency driving procedures. So all officers who engage in any form of emergency driving need to be trained in that driving; before they can commence it, they need to be qualified in that. Obviously, that qualification also comes with an understanding of the commissioner's policies and guidelines. The pursuit, once it is engaged in, needs to be authorised by an officer of the rank of inspector or above. There needs to be continual risk assessment throughout the pursuit. I will not go into the details of when a pursuit can be called off —

Mr P.B. WATSON: I am thinking of the timing, minister.

Mrs L.M. Harvey: It is 10 seconds. It is by radio. There is a continual risk assessment process.

Mr P.B. WATSON: At, say, about three o'clock in the morning, when most of these pursuits happen, would there be an instant —

Mrs L.M. Harvey: The call goes into the police operations centre. The officer can engage in the pursuit but needs to immediately seek permission to continue the pursuit. There is continual risk assessment throughout the procedure. Bear in mind that a high proportion of police chases are actually disengaged when that continual risk assessment process determines that the driving is too dangerous for the pursuit to continue.

Mr P.B. WATSON: Out of those 327 pursuits, does the minister know what percentage of those would have been called off?

Mrs L.M. Harvey: I cannot give you those figures by interjection.

Mr P.B. WATSON: People can be trained to drive pursuit cars, but lots of things can happen all of a sudden. I think the member for Joondalup said that other cars might become involved, police have to decide whether to go through traffic lights and stop signs to keep up or call in other cars to take over. Police are specifically trained for this, but all of a sudden there is a chase, the adrenaline is pumping and a lot of things can happen. The member for Joondalup said sometimes we wonder if it is worth having those pursuits not only because of the human cost, but also the damage to cars. The sorts of things that happen during a car chase, we wonder if we have the right policy to follow them. Extended penalties are included in the bill including six months' imprisonment. I am all for that, but when someone full of drugs gets into a car and goes through a traffic light, do police chase them? It may be a stolen car with drugs on board. Those people are not going to stop to think, "I'm not going to do this now because it's six months' imprisonment", or things like that. I think we are going the wrong way about it. I know we have to have these laws, but sometimes the commonsense rule should apply to some of these pursuits.

It is interesting that there are not many police pursuits in regional areas. If a car is stolen in Albany, the only place to go is Mt Barker or the ocean! The member for Pilbara mentioned today that a lot of people drive without a driver's licence. There are a lot of people up north, which is a different area; it is a bit like inland from me. There are also a lot of people in Albany who drive without drivers' licences. That is a worry. I know people who have lost their licences—I have seen them in court—and all of a sudden I see them driving around. I wonder if we should chase up people driving without licences and make sure they are off the road. Obviously they have broken the law in the first place. Maybe we should be targeting things like that to make sure the people on the road are the ones who have drivers' licences. There was a road safety conference in Albany. An inspector of police pulled me aside to say, "Up in Perth, if we put a stop thing there and grab people in certain areas, you'll probably find about 30 to 40 per cent would not have licences." We have all these people driving on the roads without licences, which is a real concern.

As I said of those 327 pursuits, I do not know whether they are just in metropolitan areas or include regional areas. In the 12 years I have been in this job, I think there was one pursuit near Lower King and a bloke lost his life. He hit the Lower King Bridge and died. I know that Geraldton does not get many. The member for

Geraldton is not in the house at the moment. I do not know why we do not have police pursuits in regional areas as much as in the city. People drive faster in country areas but we do not seem to have pursuits. I do not know why. It is not the sort of thing we see in regional areas. Are we better educated in regional areas? There are a lot more people in the city. Maybe we can look at what happens in regional areas and compare that with what happens in the city.

I am concerned about police pursuits. I know we have to protect the police. I have a sticker here "Defend your police or defend yourself"! We have to really look after our police officers. When police go out on the job every night, sometimes they are not quite sure what they have to do. We train police in emergency driving. They only have a certain amount of protection. I applaud the Minister for Police for giving them better protection but we have to be careful that we do not give them too much protection so they get gung-ho. When a police car is being driven at high speed, the adrenaline is pumping. If a person does everything that is right by the Commissioner of Police, the driver will not have charges laid against him. I brought up the instance involving the policeman who allegedly went through a red light and a civilian was killed. Does this bill cover what the guidelines are? We are covering police officers in this bill, but does the minister have control over the commissioner's pursuit guidelines or is that the commissioner?

Mrs L.M. Harvey: It is operational. The commissioner's guidelines and policies will change as pursuits change and as vehicles change. It will be re-evaluated.

Mr P.B. WATSON: Does the minister think that gives the commissioner too much power? Does the minister think something like this should come through Parliament?

Mrs L.M. Harvey: If you look at the wording, it says "substantially in accordance with the Commissioner's policies and guidelines", "reasonable in the circumstances and in the public interest". There are a number of tests there.

Mr P.B. WATSON: We have to protect our police. I am concerned about the extra $5 000 fine and the licence disqualification for two years for failing to stop when called upon. Someone on holidays from Hong Kong, Malaysia, Turkey or wherever might not understand English and could be called to stop, and panics. All of a sudden they could be jailed for two years. These are pretty strong penalties—a $5 000 fine and two years' imprisonment. Come to WA, but if you do not understand what the police say when they put their lights on or call you to stop, you can go to jail for two years and be fined $5 000! I know we need strong rules but that would be a great thing: come to WA, hire a car and go to jail!

Raising these issues is not the answer. I fully support protecting the police. I agree with 12 months' imprisonment for dangerous driving causing death, but a lot of these things are in our system anyway. There are already penalties for dangerous driving causing death. I am a bit concerned. The member for Warnbro brought up that this happened in April. We are now in the last two weeks of Parliament. I am disappointed. This bill should have been brought in straightaway to protect our police. Apart from some heavy penalties at the end of the bill, I support the bill. It will be interesting to hear from the minister during consideration in detail.

MR J.J.M. BOWLER (Kalgoorlie) [7.50 pm]: I support the Road Traffic (Miscellaneous Amendments) Bill 2012. The people in my electorate and others I have spoken to are 100 per cent supportive of the police and the government and they want to ensure that our police are protected. The outrage by my constituents about the recent police officer who was charged after a pursuit was also unanimous. I was not talking to police officers but to members of the public. I agree with and want to touch on some points the member for Albany raised. I ask the Minister for Police to please take this into consideration if she is looking at ameliorating some of these changes in consideration in detail. The last time I was in England I was driving on a country road when a police vehicle came up behind me with its siren blaring and lights flashing. What did I do? I pulled over. The policeman was going to charge me and throw me into jail for 24 hours for stopping because in England people do not stop. The policeman was not after me; he was after someone else, but I did not know that. In Western Australia we pull over. If a British tourist driving in Western Australia sees a police car with flashing lights behind him, he would think to himself that he had better not stop because if he did that in England, he would be charged.

As the member for Albany said, once people get into flight mode or are confused, all the penalties in the world will not change what that person does or thinks during that process. Some consideration must be given to visitors, foreign drivers and people panicking. I am not condoning people who drive away from the police and I urge the minister to get this legislation through. The people in my electorate are totally 100 per cent supportive of it and believe that it should have been done sooner.

MRS L.M. HARVEY (Scarborough — Minister for Police) [7.51 pm] — in reply: I will respond broadly to some of the issues members raised. I thank them for their contributions and I thank the opposition for its support for the Road Traffic (Miscellaneous Amendments) Bill 2012. The member for Midland raised a number of issues. I want to get it very clear in people's heads that this bill is not intended to be the be-all and end-all magic silver bullet for police pursuits and emergency driving involving people who drive dangerously and recklessly on our roads and flee from police. The bill is intended to be part of the solution, as all legislation needs to be.

I will put members at ease about some of the Commissioner of Police's guidelines because members wanted more information on them. Broadly, the commissioner's guidelines describe categories of emergency driving. They cover a risk assessment process that is ongoing during the course of a pursuit; the class of vehicle the officer is permitted to be driving in during the course of emergency driving; driver qualifications; maximum speeds; special exemptions that may be given to certain officers in certain circumstances; emergency warning devices; instructions relating to controlled intersections; and ongoing situation reports throughout the course of a pursuit. There are also conditions within those policies and guidelines about when a pursuit needs to be terminated and how to deal with crashes and pursuit reporting.

Mrs M.H. Roberts: Have you read the commissioner's guidelines yourself?

Mrs L.M. HARVEY: I have not read the entire document, no. I have read a summary of it.

Mrs M.H. Roberts: Have you had the actual document sent to your office at all?

Mrs L.M. HARVEY: If the member would let me finish; I am just three sentences into my response.

Mrs M.H. Roberts: I am curious. I thought it would be appropriate to let the house know that you at least had read them in some detail but clearly you haven't.

Mrs L.M. HARVEY: What I was going to offer the member—if she would give me the courtesy of getting through a couple of sentences without interjection—was a briefing by the WA Police on the commissioner's guidelines and policies that are outlined here. If the member would like to have that, I would request that —

Mrs M.H. Roberts: I would like to record that you have not actually read them and I think that is inappropriate.

Mr P.B. Watson interjected.

The ACTING SPEAKER (Ms L.L. Baker): If the minister wants to take interjections, that is the way members can intervene, but please do not just yell across the chamber.

Mrs L.M. HARVEY: Thank you for your protection, Madam Acting Speaker. In response to the member for Albany's interjection, there will be ample opportunity to provide those briefings to members if they need to put their minds at ease about the commissioner's policies and guidelines.

Perhaps I will go back to some of the statistics on the number of pursuits. In 2010 there were 318 pursuits, 61 of which ended in an accident; in 2011 there were 536 pursuits, of which 131 ended in an accident; and in 2012 so far to date there be have been 161 police pursuits resulting in four accidents. The reasons for initiating these pursuits have been overwhelmingly in four categories: failing to stop; speeding—these statistics are for people who attempt to evade police—driving in a stolen motor vehicle; and evading the police for another reason such as they are wanted for other criminal activity or other offences or they do not have a driver's licence.

The important words in defining the officers' driving to be in keeping with the commissioner's guidelines are the terms "substantially in accordance with the commissioner's guidelines". The officers' actions when driving also need to be "reasonable in the circumstances". Those words are intended to recognise that the decisions made by officers when engaged in dangerous driving are not done in a vacuum; they are made under stress with only the information the officer has at the time. This recognises that despite all the training of the officers and the constant risk assessment process the officers are required to undertake through the operation centre with an inspector, in some instances they cannot perfectly comply with every aspect of the guidelines but they will still have a defence if they are substantially within the guidelines, should this occur. I believe that this legislation provides a good balance between protections for the police officers and also the interests and safety of the community.

In response to the questions about why there has been a doubling in the number of police pursuits, the simple answer is that we do not specifically know. I cannot give members an answer about why the number of pursuits has been increasing, but it could be due to the number of recidivists who have not been jailed as a result of their activities and also because of the better intelligence police officers have at their disposal whereby they are more able to identify vehicles that may contain persons of interest and the police will then pull over the driver for a

traffic stop and request that they stop and comply with police instructions. The police have rolled out an intelligence-led policing model that comprises dedicated intelligence cells in each district. These cells publish information on stolen cars, which means that more traffic stops are occurring than previously.

I make it clear that our intention with the legislation is not to confuse people. We want potential offenders in the community to understand that people will be convicted of dangerous driving causing death or serious injury. Some of the cases that members referred to have resulted in jail terms. We would expect those cases at the very extreme end of the scale to result in imprisonment for those offenders. This legislation is designed to capture the large number of offenders who are not spending time in prison as a result of their offending. Offenders who have been dealt with for dangerous driving causing death or serious injury at the high end of the scale are dealt with appropriately by the court at present. The court statistics I have obtained suggest that last year 22 out of 104 cases against adults for dangerous driving causing death or serious injury have received a term of immediate imprisonment. While I agree with the member for Midland that there is a lot of case law —

Mrs M.H. Roberts: Are you or are you not able to give me a single case where someone was killed and they got a lesser sentence?

The ACTING SPEAKER: Minister, are you accepting any interjections?

Mrs L.M. HARVEY: I am not. I have just said that I agree with the member for Midland that in cases at the extreme end of the scale, the offenders have received a jail term, but there are a large —

Mrs M.H. Roberts: All dangerous driving causing death. They are not cases at the extreme end; it is a category of offence: dangerous driving causing death or dangerous driving causing grievous bodily harm. You have put in mandatory sentences for those things of six months and 12 months respectively and there is no evidence that you are able to provide to this house of anyone having been found guilty of those specific offences at any end of those offences who have got less than 12 months' jail.

Mrs L.M. HARVEY: I will provide that to the member now. One of the cases, Voysey v Whyatt, involved dangerous driving causing serious injury, which followed a drag race between Armadale and Maddington and resulted in a suspended jail sentence. The major reason we have introduced a mandatory minimum for dangerous driving causing death or serious injury is to avoid an unnatural disparity. The lower level offences such as reckless driving will now carry a minimum mandatory term of six months imprisonment. The mandatory penalty is a significant change and, based on the research conducted by the government, will affect a substantial number of cases. I referred earlier today to the fact that I have identified 75 reckless driving cases that occurred in the context of pursuits in the last six months. Fifty-one, which is more than two-thirds, did not result in an immediate term of imprisonment.

In producing this bill, I did not think it was desirable that reckless driving and dangerous driving causing bodily harm should carry mandatory penalties and that the higher charges of dangerous driving causing death or grievous bodily harm should not carry a mandatory penalty. If we like, it is a safety net to prevent the rare cases that might avoid a term of imprisonment as well as an assessment of what is the most appropriate penalty this Parliament would accept on a bipartisan basis. If the member wants to move an amendment to increase the mandatory minimum from 12 months, I am willing to consider it. The member mentioned that it sounded like window dressing and it may not be severe enough in the context of what we were proposing. I am open to the member moving an amendment if she thinks the penalty needs to be higher.

Mrs M.H. Roberts: It will have no impact. You quoted that case of Voysey v Whyatt, when the sentence was 12 months' imprisonment with a total effective sentence of 12 months' imprisonment. You then said that was something different.

Mrs L.M. HARVEY: I will move on to respond to what some other members contributed. I find some of the comments made quite alarming. We on this side of the house do not consider that just being a hoon is not all that serious. All hooning behaviour such as reckless driving—driving that has outcomes such as dangerous driving causing grievous bodily harm or dangerous driving occasioning death—is inherently dangerous and can have tragic consequences. When people are evading police and circumstances of aggravation are present, it is indeed much more serious because they are flouting the law, thumbing their noses at the police and endangering not only their own lives but also the police officers' lives and the lives of innocent road users into the bargain. I believe these offenders should be serving jail time. Indeed, that is why the government has introduced this legislation.

In response to comments on the defence for police officers, this defence is designed around providing additional protection for officers. It does not in any way diminish the means currently available to officers of defending a case. It will provide an additional potential defence for officers to rely on, which could conceivably apply in

circumstances where exculpatory provisions might not be of assistance. As a defence goes, it sets a relatively low bar. All that it requires is substantial compliance with any relevant policies, as will usually be the case. In the very unlikely event that such a matter went to court, all the officer would need to show is that on the balance of probabilities, he had substantially complied with all relevant guidelines and that his driving was reasonable in the circumstances and in the public interest. In practice, this is one of the reasons we have elected to refer to the guidelines. An officer involved in a serious incident will always face some form of internal investigation. If the internal investigation were not emphatic that he had grossly breached the guidelines, the prospect of the defence would mean that it would be very unlikely that the state would prosecute the officer. Having the provision on the books will give the officers peace of mind and, hopefully, avoid the need to test certain matters in court at all.

I was pleased to hear members speak in support of our police officers and, indeed, in support of legislation that will support our police officers in going about the important job they do in keeping the community safe by apprehending these dangerous offenders who have no consideration for other road users or for the consequences of their actions.

In closing, I would like to reiterate that while it is intended, and indeed hoped, that this legislation and these increased penalties will provide a deterrent to some offenders, given the nature of offending and the recidivism rates of this particular cohort of people we are targeting with this legislation, we know that the best option for the community in certain circumstances is to get these people behind bars and off the road so that the community has an opportunity for some respite from their activities. Bringing this legislation to this place has been a balancing act between protections for police officers and the interests of the community and of community safety. It has required a level of ongoing consultation and discussion with members of executive government, the Attorney General's office, the WA Police executive and, indeed, the WA Police Union. That process has been ongoing from the day I was sworn in as Minister for Police to ensure that we are getting the balance right. Ultimately, I believe my role as Minister for Police and for Road Safety is to ensure that I come through with an outcome that will be acceptable to the community and provide protections for police officers so that they know they have the backing of the state government when they go about emergency driving procedures and other aspects of their jobs. In addition to that, we need to make sure that the balance and the tension is right between those two objectives to ensure that police officers also understand that they are bound by the police commissioner's policies and guidelines and that they need to be substantially in keeping with those policies and guidelines when they undertake emergency driving procedures.

I thank members for their support of the legislation. I look forward to further interrogation in consideration in detail.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clause 1: Short title —

Mrs M.H. ROBERTS: Whilst we are on clause 1, I think most people see this as the urgent duty driving bill because that is principally what most people are concerned about in getting this legislation passed as a matter of urgency. However, there are a range of miscellaneous amendments. One of those affects the mandatory sentencing for someone found guilty of dangerous driving causing grievous bodily harm. I did ask whether the minister could provide an example of someone who had been found guilty of dangerous driving causing death and had received a sentence of less than 12 months. The minister quoted Voysey v Whatt, which was delivered on 11 November 2011. I note that that action did not cause death. Is the minister alleging that it did?

Mrs L.M. Harvey: It was grievous bodily harm.

Mrs M.H. ROBERTS: It was grievous bodily harm. The minister said it was a suspended sentence. I note that the actual sentence given at court was 12 months' imprisonment, the total effective sentence was 12 months' imprisonment and on appeal that was suspended for 18 months with the comment that —

> The hope of achieving a balance between general deterrence and the risks to community from dangerous driving must be balanced against the demands of the instant case—an early PG, full admissions, deep sense of remorse, a hard lesson, young, good prospects, no significant prior record, no suggestion that a term of imprisonment inappropriate.

Having looked at the details of that case, it seems that the minister has not been able to provide any instance of dangerous driving causing death that has resulted in a sentence of less than 12 months. The minister has found one example out of a range of cases over the past 10 years or so that have resulted in grievous bodily harm in

which the sentence was 12 months. Under the government's minimum sentencing, that would require only a six-month sentence, as I understand it. I seek the minister's comments on that and wonder whether she would like to clarify the matter.

Mrs L.M. HARVEY: In response to the member's assertion, in the case of Voysey v Whyatt —

Mrs M.H. Roberts: Whatt.

Mrs L.M. HARVEY: I thought it was Whyatt.

Mrs M.H. Roberts: W-H-A-T-T.

Mrs L.M. HARVEY: W-H-Y-A-T-T. That is the case I am talking about—Voysey v Whyatt. In that case the sentence was a suspended sentence on appeal, so no term of imprisonment was served. In the case of Silvestro, the driver turned across oncoming traffic and his woman passenger, who was pregnant, was killed. I have just been advised that she was seriously injured. That was dangerous driving causing —

Mrs M.H. Roberts: Was she killed or not?

Mrs L.M. HARVEY: It was dangerous driving causing grievous bodily harm in that instance.

Mrs M.H. Roberts: You said she was killed, so you are confusing me.

Mrs L.M. HARVEY: I am sorry to confuse the member for Midland. I will go back. In the case of Silvestro, the driver turned across oncoming traffic, and his passenger, who was pregnant, was seriously injured. On the charge of dangerous driving causing grievous bodily harm, that driver received a fine. There are 104 charges for dangerous driving causing death or grievous —

Mrs M.H. Roberts: With respect to those two cases, do you believe those sentences to be inadequate?

The ACTING SPEAKER (Ms A.R. Mitchell): Members, I will interrupt because, in accordance with standing 179, debate should be about the clause we are discussing, not general debate about the bill. I feel we are wandering and I would like to bring debate back to clause 1, the short title.

Mrs M.H. ROBERTS: There are only 14 clauses in the bill. I do not anticipate that we will be here for a long time. We can either deal with this cooperatively and get our questions answered and make good progress, or we could be here a very long time. The minister made certain assertions and I am seeking to have them clarified. This is the most general clause, but we can be pedantic. We can raise these issues during debate on other clauses or we can clarify these matters upfront and move on.

Mrs L.M. HARVEY: I am happy to answer the question. The facts are that the member asked me to provide cases in which terms of imprisonment were not applied. I have given those cases.

Mrs M.H. Roberts: And were they inappropriate?

Mrs L.M. HARVEY: Let me finish!

There were 104 cases of dangerous driving occasioning death or dangerous driving occasioning grievous bodily harm in the past 12 months. Of those 104 cases, 22 received terms of imprisonment.

Mrs M.H. ROBERTS: The minister likes to lump everything together. I asked for specific examples, but she has been able to give me only two. She will not say whether those sentences were inadequate. If those sentences were not inadequate and that is not her view, she is wasting Parliament's time bringing this legislation forward. I think much of the bill hinges on this. The minister informed the house in her response to the second reading debate that she has not read the commissioner's operating guidelines. She said she had received a briefing on them, but had not read them. She also said she will not provide them to the house. I think this is of concern, because the member for Mindarie raised the issue that a police officer will need to determine that he or she was operating substantially within the commissioner's operating guidelines, yet Parliament is not to know what those operating guidelines are. Further, the minister said in her second reading reply that she has not read the guidelines. I asked her whether she could assure the house that she had read the guidelines and that she thinks they are appropriate since we are unable to see them. She said no, she had received a briefing on them. She then further offered to provide members of Parliament, at this late stage, a briefing on what is in the guidelines. That will not satisfy most members of Parliament. The member for Albany suggested it could be difficult for country members at this point. We want to make progress on this legislation, but I think it is a significant issue that the minister will not provide that information. It reflects very poorly on her that she has not read the guidelines in full but has brought this legislation before Parliament.

Mrs L.M. HARVEY: I have said that I am happy to provide a full briefing on the commissioner's policy and guidelines around emergency driving. That offer still stands. I have been briefed on them. I am comfortable with having the reference to the commissioner's policy and guidelines and officers being substantially within the policy and guidelines as one of the caveats for the defence in this piece of legislation. There is not much more I can say about that. I will not table the commissioner's policy and guidelines in this place because those guidelines clearly detail when a police pursuit needs to be disengaged or terminated. I do not believe it is in the public interest to have that information available to potential offenders. They do not need to know all the parameters that are set around police emergency driving. We need to have those protections in place for the community. I do not believe it is in the public interest to table that document and make it available to potential offenders.

Mr J.R. QUIGLEY: I have a question arising from the minister's last comment. Is it not true, minister, that following a fatal accident involving emergency or urgent duty driving, there is always convened a Coroner's Court; and, is it not a fact that in the Coroner's Court—I have been there probably a dozen times to do this—that not only are the guidelines and the commissioner's rules introduced into evidence, but also witnesses are examined against those guidelines in front of the coroner? Is that not a fact?

Mrs L.M. HARVEY: That is, indeed, why I believe it is appropriate to have a reference to the commissioner's policies and guidelines as part of this legislation.

Mr J.R. QUIGLEY: In which case I have this question for the minister: if it is all right for the Coroner's Court to receive the guidelines into evidence in open court and to have them debated, as the minister has conceded, is the minister not insulting this Parliament, which has got to debate these laws? She is saying that it is all right for the courts to see these laws, it is all right for the people in attendance in the Coroner's Court to hear of these guidelines and to see the police examined against these guidelines, and it is all right for the clerks of the Coroner's Court and the press in the Coroner's Court to see these guidelines, but it is not all right for the Parliament of Western Australia to consider these guidelines as to whether this law is offering the police substantial protection. The minister wants to keep us in the dark, does she not?

Mr T.G. Stephens: Come on! Yes or no, minister?

Mr J.R. QUIGLEY: The minister is sitting there dumbfounded.

Mrs M.H. ROBERTS: Can the minister explain to this house why we should not interpret her failure to provide these guidelines as a contempt of this house? In case the minister is unaware, the houses of Parliament are the highest court. How can the guidelines be provided to a lower court and not to the Parliament? How can the minister justify that decision?

Mrs L.M. HARVEY: I reiterate that I am happy to provide a briefing on the guidelines.

Mr J.R. QUIGLEY: Can I have a look at them, please? Can I have a look at the guidelines, please?

Mrs L.M. Harvey: If you would like to adjourn debate, we will have a briefing on the guidelines.

Mr J.R. QUIGLEY: I am asking the minister: will the minister show me the guidelines, please?

Mrs L.M. Harvey: No.

Mr T.G. Stephens: A briefing but not going to show them to you! That is as bad as I have ever seen it.

Mr J.R. QUIGLEY: This is an incredible situation. Talk about a secret state and secret laws! Has the minister read the guidelines?

Mrs M.H. Roberts: She said she hadn't in the second reading.

Mr J.R. QUIGLEY: I want to get it on the record and have her answer a direct question. Has the minister read the current commissioner's guidelines for urgent duty and emergency driving?

Mrs L.M. HARVEY: I have been fully briefed on the guidelines and I offer that briefing to all members.

Mr J.R. QUIGLEY: Have you read —

THE ACTING SPEAKER: Member for Mindarie, before you come on board, I have not given you the call. I am going back to standing order 179. There is no general debate on clause 1 of the bill. We are going through clause by clause. Therefore, I am now going to return the debate to clause 1, as in the short title of the bill. I will put the question.

Clause put and passed.

Clause 2: Commencement —

Mrs M.H. ROBERTS: Clause 2 deals with commencement. One of the things noted in this clause is that the Road Traffic (Administration) Act 2008 is yet to commence operation. That legislation passed through the Parliament in 2008. Perhaps the minister could explain why that legislation is not yet in operation.

Mrs L.M. HARVEY: What the member is referring to is one of those areas where there are regulations that need to be drafted between Transport and Police, and that is on ongoing process.

Mrs M.H. ROBERTS: Can I just be clear? The legislation I referred to was passed by the Parliament in 2008. The reason the minister cited for the delay is that regulations are required. Regulations need to be discussed between a couple of agencies. That is regularly the case on road traffic matters because Transport and Police are both involved. There is nothing new in that. What has taken four years? Why has there been a four-year delay in coming up with the regulations?

Mrs L.M. HARVEY: The explanatory memorandum for the bill states —

> The Road Traffic (Administration) Act 2008 has yet to commence operation. It forms part of a suite of legislation for the reform of the Road Traffic Act 1974 (RTA) comprising the:
>
> - Road Traffic (Administration) Act 2008;
> - Road Traffic (Authorisation to Drive) Act 2008;
> - Road Traffic (Vehicles) Act 2012; and
> - Road Traffic Legislation Amendment Act 2012.
>
> All four pieces of legislation are drafted …

Mrs M.H. Roberts: I have actually read the explanatory memorandum —

Mrs L.M. HARVEY: Great; well —

Mrs M.H. Roberts: —so you are not clarifying anything.

Mrs L.M. HARVEY: Well that actually clarifies what the member is asking.

Mrs M.H. ROBERTS: No, it does not.

The ACTING SPEAKER: Member for Midland, if you seek the call, I will give it to you.

Mrs M.H. ROBERTS: It is just delaying things, by the way.

The question I asked is based on what I have read in the explanatory memorandum, so at no point tonight will I require the explanatory memorandum to be read to me. I have read it in full. It is upon reading the explanatory memorandum that I really do not find that it does explain why it is that the Road Traffic (Administration) Act 2008 is yet to commence operation. When I asked the minister that on the first occasion, she advised that it was because regulations needed to be drafted. I have been in this place a little while and I know that it does not take four years to get regulations drafted, even if another agency has to be consulted. The minister then referred to the suite of acts. There were a couple of them back in 2008—the Road Traffic (Administration) Act 2008 and the Road Traffic (Authorisation to Drive) Act 2008—and then there are a couple of 2012 acts that the minister has added to what she is now calling a suite. Here is some news for the minister: back in 2008, these acts were not part of a suite that was going to include some bills in 2012. For some reason, the government has sat on these acts for four years. I am asking for an explanation, not the facts. The facts are that, yes, they have been put all together in a suite and, yes, the government is going to eventually get around to enacting them and that this bill will not be enacted until these acts have come into place. The minister has not even said whether the regulations are drafted yet. Are they drafted and ready to go? This is really to the point of clause 2. No matter how quick we are today, this legislation will not commence until the Road Traffic (Administration) Act 2008, amongst others, has been proclaimed. It is actually relevant to know what the delays have been for the past four years with these acts and why it has been so complex to get regulations in place between Police and Transport. What have those delays been? How are we to know that the same delays will not occur with this legislation? How do we know that this legislation will be enacted promptly? How do we know that the things that were delaying the regulations for the past four years will now be alleviated and it will be able to be done in a matter of months? If it can be done in a matter of months, why was it not done in a matter of months and why has it taken four years? What stages are they at? What are the delays? What have been the delays with the regulations? What are the sticking points between Police and Transport that have delayed this whole suite of legislation from being proclaimed?

Mrs L.M. HARVEY: There are a number of cross references with those regulations between Transport and WA Police under the Road Traffic (Administration) Act. I can provide the member with that information if she wants a detailed description of what the delays are.

Mrs M.H. Roberts: Just a basic description tonight would be helpful.

Mrs L.M. HARVEY: The description I can give is that it is complex. The interaction between the pieces of legislation is complex. It does not affect the clauses of the bill that we are debating this evening. I am happy to provide the member with further information on those regulations at another time.

Mrs M.H. ROBERTS: I assume that the minister does not know what the delays have been and what the regulations are that need to be drafted because she has not been able to give us basic information. Saying that something is complex and that she will give it to us in writing tomorrow or at another time is not really cutting the mustard. It shows that she is not properly briefed on the bill and she does not know why there have been delays in these regulations. She just gives us blithe assurances that somehow we do not need to worry about it because those delays have nothing to do with delaying this bill and we should take her word for it. We are here to examine the legislation. This clause specifies that the Road Traffic (Administration) Act 2008 has to be enacted first. What are the regulations that have been delayed? Can the minister give us any basic information?

Mrs L.M. HARVEY: The basic information is that the delays are linked to the areas of regulation relating to heavy haulage. I would need to speak with the Minister for Transport and get the member a very detailed assessment of exactly where those regulations are up to.

Mrs M.H. Roberts: Why has it taken four years?

Mrs L.M. HARVEY: It is complex. Trying to give the member a two or three-sentence response in the time that we have this evening will probably not "cut the mustard", as the member says. I would prefer to give the member a very detailed explanation that also comprises the aspects of transport and the regulations being drafted through Transport that are causing some of the problems. If the member wants to adjourn the debate until I provide her with that information, I am happy to do that. However, section 12 and part 3 of the bill do not affect this clause of the Road Traffic (Miscellaneous Amendments) Bill, which is before the house this evening, except to preclude section 12 and part 3 being assented to on a different day to the other sections.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 49AB inserted —

Mrs M.H. ROBERTS: Clause 4 deals with the circumstances of aggravation. I will not read out that proposed section on page 3; I quoted from it in the second reading debate. Basically, there are three circumstances of aggravation with the word "or" between them. As I said, this is a 14-clause bill. It amends the Road Traffic Act 1974. Amendment bills are a little more complex than establishing bills, and when dealing with a clause in isolation that has an impact on other parts of the bill and on sections of the Road Traffic Act, some tangential points need to be made. During my speech on the second reading I referred to the fact that only one of those circumstances of aggravation apply; that is, that outlined in proposed section 49AB(1)(c). Reckless driving in circumstances of aggravation is referred to in that clause, which is obviously the clause relating to escaping police pursuit. In those cases a court must impose a six-month imprisonment sentence that cannot be suspended. However, there could be other circumstances of reckless driving and other circumstances of aggravation such as going 45 kilometres an hour or more over the speed limit or the circumstance of aggravation described in proposed section 49AB(1)(a), yet in those circumstances, there would be no mandatory six-month penalty. I ask the minister: why would someone not draw the conclusion that this will result in some anomalies in sentencing and potential unfairness in sentencing?

Mrs L.M. HARVEY: The difficulty in coming up with the increased penalties in this bill is that we were working at a maximum point for some of the offences and then ensuring that those penalties were proportionate to other offences that are captured by the act. A person who is fleeing police who has been asked by a police officer to stop is one of the most serious circumstances of aggravation that can occur. To that purpose, we believe that a term of mandatory imprisonment is commensurate with that level of dangerousness of those actions.

Mrs M.H. ROBERTS: I note that in the minister's reply to the second reading debate she did not respond to a lot of the points made by a lot of members. I gave a particular example that I requested a response to. I gave the example of the two motorcycle riders. I can either repeat the whole example again now or perhaps the minister might like to respond to the point that I made in my speech on the second reading. I will give the minister the

opportunity to do that. If she fails to do that, I will stand up and basically repeat what I said and put the same question that I put at length in my speech on the second reading.

Mrs L.M. HARVEY: I understand that the member's hypothetical related to a person who was fleeing the police on a motorcycle. That person shot down between two lanes of traffic and then was so busy looking at their rear-view mirror to ensure that they had escaped the police that they intercepted a pedestrian and caused grievous bodily harm. Had that person been subject to a police pursuit, regardless of whether the person was still being pursued by police, under this legislation that would be considered a circumstance of aggravation.

Mrs M.H. ROBERTS: That was one part of the hypothetical that I put. I turn to the offence of reckless driving in circumstances of aggravation, as referred to in proposed section 49AB(1)(c) in the bill; that is, escaping from police pursuit. Whether a person harms anyone, the summary table and the bill states that the court must impose a six-month imprisonment sentence and this cannot be suspended. As part of her answer, the minister just said that she was keen to get things proportionate—the sentencing should be proportionate and presumably there should be some fairness and logic to it. The hypothetical example of mine that the minister did not quote was the example of someone driving in a different circumstance of aggravation; that is, driving at 110 kilometres an hour in a 60-kilometre-an-hour zone, so they are going 50 kilometres an hour over the limit. They then wilfully drive at 110 kilometres an hour in a 60-kilometre-an-hour zone when a small child comes out of day care with their parents, they let go of the child's hand and the child crosses the road. In this circumstance, grievous bodily harm occurs to a toddler because someone is driving at 110 kilometres an hour in a 60-kilometre-an-hour zone. In that circumstance, depending on a range of factors, the judge could determine to give that person a suspended sentence and they would serve no jail term whatsoever. However, in the hypothetical example I gave, the person on the motorcycle could commit grievous bodily harm. Under proposed section 49AB(1)(c), if they get done for reckless driving, the court must impose a six-month sentence on them; but they might injure no one at all and they will be required to serve a six months' jail term. I ask the minister again: is she or is she not creating an anomaly and is the law she is proposing fair?

Mrs L.M. HARVEY: The point of this legislation is to send a message loudly and clearly that if people are asked to stop by police and they fail to stop and a pursuit ensues, they should spend time in jail. This is the intention and that is what this clause will achieve.

Clause put and passed.

Clause 5: Section 53 amended —

Mrs M.H. ROBERTS: This clause increases the penalties for a range of offences for a driver of a vehicle who refuses to state their name and place of abode or provides a false name or place of abode; so they commit an offence. The penalty is increased to six penalty units at $50 each, which is a $300 penalty for a first offence, and 12 penalty units for a subsequent offence. Proposed subsection (2A) reads —

> A driver of a vehicle who refuses or fails to stop his or her vehicle when called upon to do so by a member of the Police Force commits an offence.

There is no increase in the current penalty for a first offence or a second or subsequent offence for refusing to provide details—that is, name and address—when required to do so by a member of the police force; but there is a significant increase in the penalty when they fail to stop when called upon to do so by a member of the police force. The fine will increase from $300 to $1 200, and for a subsequent offence the fine is increased from $600 to $2 400. These are very significant increases. I made the point when speaking on the second reading of the bill that these penalties are appropriate, particularly given that the reason police officers will be asking people to stop will in fact be because of offences for which there are greater penalties. If we do not have a more onerous penalty in place for failing to stop, I could suggest that we are encouraging people not to stop because the consequences of stopping at the moment are potentially much greater than the penalty for failing to stop. The big increase here is for refusing or failing to stop a vehicle when called upon to do so by a member of the police force in a circumstance of aggravation, and that is only in proposed section 49AB(1)(c), of escaping a police pursuit. The proposed penalty is two years' imprisonment, a minimum penalty of $5 000 and a minimum licence disqualification of two years. I understand from the table that the minister has provided that currently there is no penalty for doing that. I am a little surprised by the "not applicable" in that table, and perhaps it means that there is no greater penalty than the penalty that is listed for refusing or failing to stop a vehicle generally. I would like that matter clarified, please.

Mrs L.M. HARVEY: What the member has assumed is correct.

Mrs M.H. ROBERTS: I understand that currently the penalty for refusing or failing to stop if called upon by police, because there is currently no circumstance of aggravation, is $300 for a first offence and $600 for a subsequent offence. That is the way I am interpreting that at this stage.

Mrs L.M. HARVEY: That is correct. The current penalty for a first offence is a fine of up to $300 and for a subsequent offence a fine of up to $600. We propose to change those so that the first offence will be a fine of up to $1 200 and for a subsequent offence a fine of up to $2 400; and then in the circumstance of aggravation, where the person is driving a vehicle to escape pursuit, there will be a mandatory fine of $5 000, a mandatory two-year licence disqualification and imprisonment for up to two years.

Mrs M.H. ROBERTS: How did the minister determine to put in place a minimum licence disqualification of two years? What is the rationale for that penalty?

Mrs L.M. HARVEY: We believe that when police officers ask someone to stop and they fail to stop and then flee and a pursuit ensues that they should have their licence disqualified for two years.

Clause put and passed.

Clause 6: Section 59 amended —

Mrs M.H. ROBERTS: Proposed subsections 59(4A) and (4B) read —

> (4A) A court sentencing a person for an offence against this section committed in the circumstance of aggravation referred to in section 49AB(1)(c) must —
>
> (a) sentence the person to a term of imprisonment of at least 12 months; and
>
> (b) not suspend the term of imprisonment.
>
> (4B) Subsection (4A) applies whether the person was convicted on indictment or summarily and despite the *Sentencing Act 1995* Part 5.

Proposed section 59 creates the offence of dangerous driving causing death or serious bodily harm. The minister has chosen a term of imprisonment of at least 12 months here and that 12 months is not to be suspended. What was the rationale for choosing that particular period of imprisonment and why is there a minimum sentence rather than leaving it with the maximum sentence?

Mrs L.M. HARVEY: This proposed section sets a minimum term of imprisonment of 12 months, and the maximum that can apply in these circumstances is 20 years. We believe that a minimum period of imprisonment of 12 months is an appropriate starting point to a maximum of 20 years at the judge's discretion.

The ACTING SPEAKER: There are members who are talking in the chamber. Member for Wanneroo, I ask you to take your seat.

Mrs M.H. ROBERTS: I have spent a deal of my speech today referring to this clause, and I asked the minister to point out cases in which some injustice had been done, the sentences were inadequate or an offence with a maximum sentence of 20 years, or 14 years in other cases, had resulted in people being inadequately sentenced to fewer than 12 months. The fact is that they are very rare occurrences. In fact, one of the cases the minister referred to was a case in which the court had actually allocated a 12-month sentence of imprisonment and, on appeal, because of the circumstances of the individual, the appeal was upheld and the sentence was suspended for a period of 18 months. Although I am not absolutely familiar with that case, I can see that the appeal court judge—they are generally very learned people—made a considered decision as to what he regarded as appropriate. It is my guess, I suppose as much as anything else, that the judge probably made the right decision and that in that particular circumstance the public benefit was probably well suited by giving that person a suspended sentence so that he was able to get on with his life. If I remember some of the notes I read about it, he had some prospect of becoming an aviator, he was deeply remorseful, and he had a good education and good family support. I am not 100 per cent sure if this was the case, but I think the injured party did not want an immediate custodial sentence for that individual either. I think that in many respects the law has served us well.

What concerns me about this clause is that it has not come about because of any real demonstrated need; it has come about because we have a government that wants to be seen as tough on law and order in the lead-up to the election. A 20-year maximum penalty for this offence exists. I read out only a small number of the cases that have been dealt with in the appeal court and cases that the Office of the Director of Public Prosecutions looks at as part of its sentencing guidelines, and although I did not calculate an average, plenty of examples of sentences of five, six, seven, eight or more years exist—not just one year, but substantially more. Those judges had the opportunity of weighing up the exact circumstances of the cases—the incidents—themselves. As I see it, no

glaring case of somebody having committed the most horrendous act or crime and having shown no remorse, and the victims having been deeply unsatisfied, would have in any way been remedied by this legislation.

There is little point, though, in the opposition opposing this clause because I think, by and large, that it will be meaningless; it will have no impact at all. In the vast majority of cases of dangerous driving having resulted in someone's death, or indeed even cases of grievous bodily harm, those offenders have received substantial sentences that certainly exceeded 12 months. Going back over the past 10 or 15 years, the minister can point to two cases that are really at the edges. She is not prepared to go on record as saying she thinks an injustice was done in either of those cases. I think this clause probably more than any other highlights really, as I see it, the hypocrisy of the government in talking tough on law and order and not actually delivering anything. On that basis, there is not a lot of point in the opposition opposing it because it is not really providing for a tougher outcome.

Mrs L.M. HARVEY: I believe that this mandatory minimum is appropriate. There is a very big difference between bodily harm, grievous bodily harm and, obviously, death. Grievous bodily harm provides, by definition, a degree of ongoing discomfort and potential disfigurement; it is a much more serious offence than bodily harm. I believe that this is an appropriate starting point.

Mrs M.H. ROBERTS: It is interesting that the minister just alleges that this is an appropriate starting point.

Mrs L.M. Harvey: It is intended to be a floor, not a ceiling; the ceiling is 20 years.

Mrs M.H. ROBERTS: The minister has clarified nothing by saying that; it has been said over and again in this debate that the maximum penalty is 20 years. What we are really debating now is what the minister is putting in place in this particular bill, which is a minimum of one year. The minister has not established any rationale for that one year, other than she thinks at least one year is appropriate. Guess what? When someone is found guilty of an offence with a 20-year maximum penalty, they generally get more than one year. I have cited case after case and I have a couple of documents with examples of cases and sentencing guidelines that the DPP and judges use when looking at an appropriate sentence.

Generally, the law is changed when there is a demonstrated need and when some better outcome could be achieved on behalf of the community. I think the minister has failed to point out how a better outcome will be achieved for the community through this clause because I do not believe it will provide for an increased penalty in any circumstance that involves a death. I think it would be in only the odd exceptional case that involved grievous bodily harm or bodily harm to someone that an increased penalty would result. It will be a case such as the one the minister referred to involving Whyatt, in which, on appeal, a learned judge decided that the interests of the community and of the offender would be best served by a suspended sentence. What we are now doing is taking away judicial discretion. Although that might be a populist thing to do in some quarters, the fact of the matter is that it is not something that should be done lightly. If we are going to take away judicial discretion, we should do so on a sound basis. The minister has failed to provide us with any sound basis to amend the law, other than the blithe assertion that she believes someone should get at least 12 months. My argument is simply this: guess what? Most of them get a lot more than 12 months.

Clause put and passed.

Clauses 7 and 8 put and passed.

Clause 9: Section 60 amended —

Mrs M.H. ROBERTS: Proposed section 60(1c)(a)(i) states —

> the driver is on official duty as a member of the Police Force and the driving is 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; or

We attempted to get some answers relating to this matter up-front following the second reading and when we were dealing with clause 1, the short title of the bill. It seems to me to be showing some form of contempt of Parliament not to provide documents that would be provided in open court. I again question the Minister for Police's judgement on this matter and I question the minister's commitment to this legislation if she has not even fully read the Commissioner of Police's guidelines herself. The member for Mindarie has quite rightly said that these guidelines are made available in public at the Coroner's Court, yet the minister will not provide them to members of this house. To my way of thinking, it seems to show some form of contempt to this house and its members. It is a fact that these guidelines can be gained through the Coroner's Court. The minister has offered members a briefing on those. I do not think a briefing is sufficient. I think members would want to read them for

themselves, as the judge in the Coroner's Court and indeed any journalist who goes along to the Coroner's Court is able to do.

Mrs L.M. HARVEY: I reiterate that I am prepared to provide a full briefing of the Commissioner of Police's policies and guidelines bearing in mind that the police knowledge database is an extensive cross-referenced manual. Taking one section of that manual out of context will potentially not serve the purpose that the member is after. If the member wants to adjourn debate at this point, I can provide a briefing on the commissioner's policies and guidelines tomorrow. I am more than happy to afford that opportunity to the member for Midland and any other member.

Mrs M.H. ROBERTS: No; we will not be affording ourselves that opportunity. We have asked to actually see the guidelines. The Minister for Police said she will not provide them to us. A briefing about them is not what we have asked for and —

Mrs L.M. Harvey: I would provide them at the briefing, but I am not prepared to make them a public document.

Mrs M.H. ROBERTS: We are making progress, member for Mindarie. The minister has now said she will actually provide the guidelines at the briefing.

No; we do not want to delay the passage of this bill tonight so we will not take up any offer to adjourn debate.

Clause put and passed.

Clause 10: Section 61 amended —

Mrs M.H. ROBERTS: I am not sure whether the member for Girrawheen wanted to raise her point with respect to clause 10 or whether she wants to raise it with clause 11.

Ms M.M. Quirk: Clause 9.

The ACTING SPEAKER (Mr I.M. Britza): We are on clause 10.

Mrs M.H. ROBERTS: Clause 10 deletes section 61(3)(a) and (b) and proposes to insert —

> (a) unless paragraph (b) applies —
>
> (i) for a first offence — to a fine of 60 PU …

That is penalty units. Is the minister able to remind me what that has gone up from? What was it prior to being 60 penalty units for the first offence?

Mrs L.M. Harvey: It is the second one on the table. The member might have a different table from mine. Dangerous driving, the first offence, we are increasing it to —

Mrs M.H. ROBERTS: From $800 to $3 000—is that it?

Mrs L.M. Harvey: Yes, a $3 000 fine, which is 60 penalty units.

Mrs M.H. ROBERTS: Sixty lots of $50 for dangerous driving.

Mrs L.M. Harvey: From 16 penalty units, which is the equivalent of $800, to 60 penalty units, which is the equivalent of $3 000.

Mrs M.H. ROBERTS: I note that a second offence of dangerous driving goes up from $2 000 or imprisonment for nine months and a minimum disqualification for 12 months, to $6 000 in fines—that is a tripling of the fine—imprisonment for nine months remains the same and a minimum disqualification of 12 months remains the same. Proposed section 61(3)(b) contains the circumstance of aggravation. That goes up to 720 penalty units, which I understand to be $36 000, from the table here. That is a vastly significant fine. Again in the table, the current penalty is not applicable but I think it is really whatever applies to the regular dangerous driving offence, and the grid above would apply.

Mrs L.M. Harvey: That is correct.

Mrs M.H. ROBERTS: Because it would just be dangerous driving without the circumstance of aggravation as it is intended to be provided for in this bill. Imprisonment for three years is effectively taking imprisonment up from nine months to three years. I understand that is a maximum penalty —

Mrs L.M. Harvey: Yes.

Mrs M.H. ROBERTS: — and a minimum disqualification of two years. Interestingly, the three years' imprisonment is a maximum whereas the two years' licence disqualification is a minimum, and in some circumstances perhaps someone might get a suspended sentence. If a person received a suspended sentence, they

would have that driving disqualification for a minimum of two years alongside their suspended sentence and a fine of up to $36 000 —

Mrs L.M. Harvey: Yes.

Mrs M.H. ROBERTS: — rather than a maximum. I am happy to have that clarified; thank you.

Clause put and passed.

Clause 11: Section 61A inserted —

Ms M.M. QUIRK: I am sure the member for Mindarie will be much more eloquent and analytical than I will be. Minister, I have a problem with clause 11, particularly references to the commissioner's policies and guidelines. Would the minister confirm that the commissioner's policies and guidelines change from time to time?

Mrs L.M. Harvey: Yes.

Ms M.M. QUIRK: I then have a difficulty. This legislation does not enshrine the Commissioner of Police's policies or guidelines that exist at the time this legislation is passed. That provision may well be void by virtue of uncertainty. At any particular time, does this legislation refer to the commissioner's guidelines at some other time? I think it is void because it is uncertain. It will be necessary for relevant policies either to form part of regulations or a schedule to this legislation because I consider that that is very unclear and ambiguous.

Mrs L.M. Harvey: I am sorry; I missed the question.

Ms M.M. QUIRK: That is because the minister was listening to her adviser the whole time instead of listening to me! Does the minister want me to repeat it all?

Mrs L.M. Harvey: If you could just repeat the last sentence, please, member.

Ms M.M. QUIRK: I want to know what the position is, minister—that was the last sentence.

Mrs L.M. HARVEY: My understanding of the question is that the commissioner's policies and guidelines could be subject to change. As such, we do not have a static point in time, as part of this legislation, governing the commissioner's policies and guidelines. In effect the member is correct: the Commissioner of Police is appointed to provide instruction to police officers about the policies and guidelines around a range of activities that police officers need to undertake in the course of their duties. I believe that the commissioner's policies and guidelines need to be a contemporary document that can change with time. It will change with technology and technological advancements, such as advancements in police vehicles. I believe that it will not be too far into the future when vehicle disabling technology will be available that will substantially change the commissioner's policies and guidelines around pursuits. I believe we need to reference the commissioner's policies and guidelines without having to come back to this place every time there is a change in the policy and guidelines or there is a review or a change in technology.

Ms M.M. QUIRK: I will put it this way: when in fact someone is alleged to have committed an offence, do we go back to the policies and guidelines that were in effect at the time the legislation was passed—the reference in here relates to those that currently exist—or is it about the policies and guidelines in effect at the time of the commission of the offence or when the matter comes to court? How is it possible that if a specific temporal reference was made about when the guidelines would apply, that would get over the issue? What would stop the commissioner from changing the guidelines between when the alleged offence occurred and when the matter was litigated?

Mrs L.M. Harvey: It specifies it in the legislation. It says —

> 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;

Ms M.M. QUIRK: If someone who is charged with an offence asks their lawyer for legal advice about what they should do, how can the lawyer access the guidelines that were applicable at the time of the offence? Will that be provided as further and better particulars of the offence or will the lawyer have to FOI them? Why can a code of conduct or some guidelines not be annexed to the regulations, which are no problem to change from time to time? It is a matter of gazettal. The minister of all people should know that it does not mean coming back here all the time; it simply means gazettal, at worst.

Mrs L.M. HARVEY: With respect to an officer who has been charged, the commissioner's policies and guidelines relating to the driving would form part of the disclosure when the offence is being preferred.

Ms M.M. QUIRK: Prior to that time the lawyer may well want to give advice. I am saying that without going through the disclosure process, FOI or whatever, for someone to get a quick, ready reckoner as to what their legal position is, I do not see why we are legislating in a vacuum. We do not even know what is in the guidelines. It is broader than the guidelines; it extends to policies. That is my real issue with it. I also note in that context that in clause 9 it refers to driving "substantially in accordance with the Commissioner's policies and guidelines". Again, what particular guidelines will take priority over others? Which are more important? If the officer complies with 80 per cent of those guidelines, is that enough? It might be that the other 20 per cent are the key guidelines. All of this is extremely unclear. In any situation that involves criminal sanctions, it will be interpreted in favour of the accused. It seems to me that it would be much better if this were a code in itself and we did not have to refer to some other document that, frankly, is not readily accessible to someone who wants to find out what the sanctions are.

Mrs L.M. HARVEY: To give the member some background, the use of the terms "substantially in accordance" and "reasonable" are intended to recognise that the decisions made by officers when they engage in emergency driving are not done in a vacuum. They are done under stress with only the information the officer has available to him at the time. Therefore, in the event something does go wrong, the provisions are intended to give the court the necessary latitude to look at all the circumstances at the time of the offence, including when the officer may not have strictly complied with the black letter of the commissioner's policies, but their actions and the nature of the circumstances could still render their actions objectively reasonable. Further to that —

Mr J.R. Quigley: Subjectively?

Ms M.M. Quirk: Yes, it is subjective.

Mrs L.M. HARVEY: Members must remember that a policy may use a word that, by its very nature, has a number of meanings. The use of the term "substantially in accordance" is intended to capture a situation in which the officer's actions are not so materially different as to render them completely outside what was contemplated by the words of the policy or the intent of the policy.

Mr J.R. QUIGLEY: I wonder whether the minister could help the police constables with this answer. Proposed section 61A, which is intended to be inserted into the Road Traffic Act, is headed "Reckless or dangerous driving—defence for police officers in certain circumstances". The first paragraph stipulates the four offences to which the defence will apply. It says —

> 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 satisfies the court that, at the time of the …

That will be the constable or the driver will it not, minister?

Mrs L.M. Harvey: Yes—the driver and legal representation.

Mr J.R. QUIGLEY: The legal representation is not on trial; it is the driver who will have to satisfy the court, is it not?

Mrs L.M. Harvey: Yes.

Mr J.R. QUIGLEY: Under this legislation, the minister has agreed that the police pursuit driver will have to satisfy the court that the three following paragraphs are applicable to his circumstances. Do we agree?

Mrs L.M. Harvey: Should he wish to rely on this defence, as opposed to other defences that may be available to him in certain circumstances and other exculpatory excuses.

Mr J.R. QUIGLEY: To what other defences and exculpatory paragraphs does the minister refer?

Mrs L.M. Harvey: Any. There are a variety available to officers.

Mr J.R. QUIGLEY: But which ones? I do not follow.

Mrs L.M. Harvey: There are other defences under the Road Traffic Act and defences available to police officers under the Criminal Code.

Mr J.R. QUIGLEY: What defences are available to the officers under the Criminal Code?

Mrs L.M. Harvey: Perhaps you should just get to the end of your question. This is not an interrogation.

Mr J.R. QUIGLEY: The minister raised it and I am just trying to clarify the answer the minister is giving.

Dr K.D. Hames: If anyone would know, you would.

Mr J.R. QUIGLEY: Know what?

Dr K.D. Hames: The answers to the questions you are asking. You're the lawyer.

Mr J.R. QUIGLEY: I cannot interpret the minister's babble; I can interpret the proposed section. I have correctly interpreted the proposed section because the minister has agreed that it is the police pursuit driver, who is on charge as the accused, who has to satisfy the court of that which is in proposed section 61A(1)(a), (b) and (c) if he wishes to avail himself of the defence to be inserted at proposed section 61A; correct?

Mrs L.M. Harvey: Yes.

Mr J.R. QUIGLEY: We will go through this because this is new ground. For the first time in Western Australia, under the Barnett government, a police officer is being forced to prove his innocence if he relies on this defence—if the accused satisfies the court. I just want the minister to help police drivers by saying what they will have to prove to establish their defence under the new Barnett police defence law. The first thing that he has to satisfy the court of is that he was on official duty as a member of the police force at the time of driving. Can we agree on that?

Mrs L.M. Harvey: Yes.

Mr J.R. QUIGLEY: Is that correct?

Mrs L.M. Harvey: I am waiting for you to get to the end of your question.

Mr J.R. QUIGLEY: That is my question. The first thing the accused officer will have to prove to the court is that at the time he was driving, he was on official duty as a member of the police force. We can agree on that much, can we not?

Mrs L.M. Harvey: Are you sitting down?

Mr J.R. QUIGLEY: That is a question. Does the minister agree that is the first thing a police officer seeking to avail himself of the defence has to prove—he has to satisfy the court that he was on official duty as a member of the police force?

Mrs L.M. HARVEY: I think it is very clear in proposed section 61A—I will not read through it; I think all members who are interested in this will have it in front of them—that the police officer will need to satisfy the court under proposed section 61A(1)(a),(b) and (c), as the member for Mindarie said, and under proposed section 61A(2), which reads —

> Subsection (1) does not affect the application of any other defence the accused may have.

Mr J.R. QUIGLEY: That went further than the question, but thank you. That is the first thing he must satisfy the court. The second thing the police constable must satisfy the court is that he was driving substantially in accordance with the commissioner's policies and guidelines. Does the minister agree with that?

Mrs L.M. HARVEY: It is all there, member, in proposed section 61A(1)(a), (b) and (c) and proposed subsection (2).

Mr J.R. QUIGLEY: The minister interjected on me during my contribution to the second reading debate. Why did she interject on me and say that I was wrong? On what basis did she interject and say I was wrong in relation to my interpretation of proposed section 61A, which I agree with her is all there?

Mrs L.M. HARVEY: I will answer that question. This defence provides an additional defence for officers who are charged with reckless or dangerous driving. There is a defence for police officers in certain circumstances that this Liberal–National government is affording them. Where I said the member was wrong is that in no way, shape or form will police officers be in a worse position after this bill is passed.

Mr J.R. QUIGLEY: Before the passage of this bill, where in any law in Western Australia was there the requirement for the police officer in pleading his defence to prove anything? Under which particular law did the police officer have to establish anything on the balance of probabilities?

Mrs L.M. HARVEY: It would depend on the charge. At the moment under this charge of reckless or dangerous driving, the defence for police officers in certain circumstances is as the member for Mindarie has described.

Mr J.R. QUIGLEY: What does the minister mean "as described"—as described in proposed section 61A?

Mrs L.M. Harvey: Yes.

Mr J.R. QUIGLEY: The minister has not read the guidelines herself, but can she tell the poor hapless police officer which part of the guidelines they will have to obey before they can avail themselves and be cleared under proposed section 61A(1)(b)?

Mrs L.M. HARVEY: I think the member will agree that every single police pursuit that has consequences unforeseen at the time an officer is engaging in emergency driving procedures is unique to those particular circumstances, which is why we have allowed in the defence for that definition of being substantially in accordance with the commissioner's policies and guidelines.

Mr J.R. QUIGLEY: The minister has not allowed for them in the defence; she has put an obligation on police drivers to prove that they were substantially within the guidelines, and I want to ask this: are there any threshold guidelines; for example, before a police officer can be classified as being substantially within the guidelines, does the driver have to be an authorised pursuit driver?

Mrs M.H. Roberts: The question was: does the driver have to be an authorised pursuit driver to fit within the guidelines?

Mrs L.M. HARVEY: The driving has to be substantially in accordance with the commissioner's policies and guidelines.

Mrs M.H. Roberts: Is the answer no or not?

Mrs L.M. HARVEY: The member is asking hypotheticals here. I need to draw members' attention to the fact that there has been extensive consultation with the police union, the State Solicitor's Office and the Attorney General on this legislation.

Several members interjected.

The ACTING SPEAKER: Members!

Mrs L.M. HARVEY: We are all in agreement that this defence will provide protections for police officers in the circumstances that police officers, the union and this government have agreed that they needed greater protection.

Mr J.R. QUIGLEY: Does the minister agree that the guidelines authorise only the inspectors at VKI to approve a pursuit when the person seeking approval for the pursuit to be a pursuit driver is in fact a qualified pursuit driver? Is that part of the guidelines?

Mrs M.H. Roberts: She doesn't know because she hasn't read them.

Mrs L.M. Harvey: I have answered these questions already. We are going around in circles.

Mr J.R. QUIGLEY: I have not heard anyone in this chamber ask the question: does the pursuit driver have to be a qualified pursuit driver?

Mrs M.H. ROBERTS: The member for Mindarie has been trying to get the answer to quite a specific question for some time now. Yes, the minister has given responses, but she has not actually answered the questions he was asking. To assert that somehow it must be okay because the minister has consulted the police union and assorted other people and various people have agreed to it, does not answer any questions. It just reiterates who the minister has consulted. Perhaps the minister might have done better to take up the opposition's offer of consultation on this bill. We have been asking her for more than two months for a draft of the legislation. In fact, I think the Leader of the Opposition put out a press release four or six weeks ago calling on the government to provide us with a copy of its draft legislation so we could deal with this in a bipartisan way. If we had received a copy of the draft legislation, one of the people who could have looked at it is the shadow Attorney General. The member for Mindarie, as has already been outlined to the house, has had more than a quarter of a century's experience representing police officers when he worked as a lawyer for the police union. He has been the principal lawyer defending police officers' actions on numerous occasions with respect to the Road Traffic Act. If anyone in this house knows more about the practical operation of these clauses than anyone else, it is, of course, the member for Mindarie. He has asked a pretty simple question that the minister has not been able to answer, so I will try to put it to her so she can understand it. The member for Mindarie asked whether a police officer would need to be a qualified and trained pursuit driver in order to substantially comply with the guidelines. I would further like to ask: does officers' pursuit training need to be up to date?

Mrs L.M. HARVEY: Just to be clear—I thought I had made this clear previously, but I will say it once again—this provides a defence for police officers, in certain circumstances, for reckless and dangerous driving for any emergency driving that police engage in. If that emergency driving is for the purpose of organ transportation or those sorts of things, the driver will need to be authorised and trained in that aspect of emergency driving before they can engage in that emergency driving. If the emergency driving is part of a pursuit, the driver will need to be trained in pursuit driving in order to engage in the pursuit. I have said that a number of times already. I think that has made it clearer for members so that they will understand that the drivers have to be trained.

Mr J.R. Quigley: As pursuit drivers?

Mrs L.M. HARVEY: If they are in a pursuit, yes.

Mr J.R. QUIGLEY: If they are not in a pursuit—they are not chasing anybody—is the minister saying that they can fit within the guidelines if they drive recklessly and if they have no training for high-speed driving?

Mrs L.M. Harvey: That is not what I said. I said that if they are engaging in emergency driving, they need to be trained in emergency driving. If they are engaging in driving that is of a pursuit nature, they need to be trained as pursuit drivers. How many more times would you like me to say that?

Mr J.R. QUIGLEY: So are there two separate guidelines, one covering pursuit driving and one covering emergency driving? The commissioner has two different guidelines, has he?

Mrs L.M. Harvey: It is all encompassed in the range of commissioner's policies and guidelines.

Mr J.R. QUIGLEY: But we do not have those, and the minister said she would give us a briefing on that. So I am asking the minister for a briefing now. Are there two guidelines, one covering pursuit driving and one covering other emergencies? Is that in the guidelines?

Mrs L.M. HARVEY: The commissioner's policies and guidelines pertain to all driving of officers at any given time. Whether they are in a police vehicle, emergency driving or pursuit driving, it is covered under different sections of the commissioner's policies and guidelines.

Mr J.R. QUIGLEY: In the back of the Parliament, when I sought a briefing, I was briefed that before an officer could be given permission to engage in a pursuit, they would have to be a qualified pursuit driver. Is that correct?

Mrs L.M. Harvey: Yes. I think I have said that, have I not?

Mr J.R. QUIGLEY: Will the driver need to have authorisation from VKI before he undertakes pursuit or emergency driving?

Mrs L.M. HARVEY: He needs to seek permission to continue a pursuit, from an inspector. He needs to engage in a constant risk assessment during the course of that pursuit. The commissioner's policies and guidelines are clear about that. The police officers understand what the parameters are for their emergency driving. They understand what the requirements are. That is why we have referred to the commission's policies and guidelines under proposed section 61A(1)(b).

Mr J.R. QUIGLEY: But the minister has never actually read them? Seeing that the minister has put this obligation upon police officers to prove this to a court, is it by numbers? How many of these guidelines are there, and how many do the police have to prove they have complied with before they are able to defend themselves?

The ACTING SPEAKER: The question is that clause 11 stand as printed.

Mr J.R. Quigley: I just asked a question, and I was hoping for an answer. No answer to that question. Okay. I will ask another question.

The ACTING SPEAKER: No; the member cannot stand up twice.

Mrs M.H. ROBERTS: I would like to find out whether the minister has any reason, other than ignorance, for not answering the member for Mindarie's question.

Mr J.R. QUIGLEY: I suggest that the minister has not helped any police to work out what they will need to do to defend themselves under paragraph (b). What evidence will this law require a constable to introduce to satisfy paragraph (c), the public interest test? What is the government envisaging? How far will the constable have to go, and what evidence does the minister envisage the constable will have to produce, to satisfy the court of paragraph (c)? This has never happened before to a police constable.

Mrs M.H. ROBERTS The member for Mindarie has asked some very important questions, I think, about the public interest test. The minister has made no comment on this. This is a particular concept introduced in this bill. I do think it is beholden on the minister to answer that question.

Mr P. PAPALIA: I think it is essential that rather than just sit there, apparently refusing to answer, the minister consider the consequences of not answering. The minister is sending a clear message to police officers who may, as the member for Mindarie has indicated, be confronted in a court of law under the legislation that the minister is introducing and without her providing any sort of indication or guidance or assistance to them as to what criteria they will have to meet to be found not guilty. I think that is incredible. The minister is the one who is doing this. The minister is doing this to the police officers in Western Australia. The minister, under the guise of attempting to assist them, may be making it worse. For the minister not to be capable of answering this question

is an incredible indictment on either the minister's motivation, or her lack of knowledge or her lack of preparation to come into this place with this legislation. Earlier this evening, the Leader of the House was berating me and suggesting that I was being inappropriate in delaying the house by asking questions in a second reading debate. I would put it to the minister that we are not delaying the house. What we are doing is probably trying to help the police officers of Western Australia, and probably trying to help the minister, too, in ensuring that she does her job. If the minister cannot find an answer, perhaps she should seek other advice.

Mrs L.M. HARVEY: Member, my answer is in the explanatory memorandum at page 12. I think the explanatory memorandum clearly explains all the aspects that have been raised here as questions.

Ms M.M. QUIRK: Is the minister able to tell us whether there is any cap on the speed at which pursuits can be conducted under the current commissioner's policies and guidelines? I understood it is 145 kilometres an hour, or is there now no limit?

Mrs L.M. HARVEY: The cap is 140 kilometres an hour.

Mrs M.H. ROBERTS: I am pretty astounded at the lack of clarity here. It is not as though the minister was not essentially forewarned of the issues that were to be raised by the member for Mindarie. I have outlined, as has the member for Mindarie, his experience in these matters before the house. The member for Mindarie has raised, in my opinion, very real concerns that police officers may not be better protected as a result of this legislation. The government has said that police officers will be better protected. But we have someone here who is an experienced barrister, and who has defended police officers after they have been involved in crashes in which they have been involved in pursuits, and he has defended those police officers successfully. I believe that the member for Mindarie had a 100 per cent success record in defending those officers. Am I right, member for Mindarie?

Mr J.R. Quigley: That's true. The member for Murray–Wellington will be able to confirm that.

Mrs M.H. ROBERTS: The member for Mindarie has intimate knowledge of this area of law and had success in defending police officers who found themselves in a court of law after coming to grief while engaged in urgent duty driving. He was engaged on many occasions to represent those officers for the police union. He has read the legislation. He is someone with more than a quarter of a century, probably 30 years or more, of experience in the law, most of that time as a barrister and most of that time defending people. He spent a lot of that time—27 years—defending police officers, having been engaged to do so by the police union. Lawyers look to the legislation to see how they can best defend their client. In this case, as the member for Mindarie has pointed out, the lawyer's client is the driver of the police vehicle, the police officer. He went through some tests and so forth. It is his considered opinion that these laws may make it tougher for police officers to defend themselves, rather than easier. If that is the case, that is really very serious. He raised that earlier this afternoon. The minister has had the opportunity to get advice on this matter. This is a 14-clause bill and this is just one clause. The member for Mindarie signified his knowledge of and interest in this clause earlier this afternoon. The minister should have come in here tonight prepared to answer some of those questions and to reassure the house. She has provided no information, other than an assertion —

Mr P.T. Miles: What's your question?

Mrs M.H. ROBERTS: Does the member realise that it is unruly to interject and that I have five minutes' speaking time?

Mr P.T. Miles: Ask a question.

Mrs M.H. ROBERTS: This is not question time. It is twenty to 10 at night, not question time. If I like, I will get up and speak for another five minutes.

In those circumstances I would have thought that the minister would have been prepared to answer those questions and would have been able to provide some reassurance to this house and to her own colleagues that this legislation will in fact achieve the aim that she said it will; that is, to make it easier for police officers to be able to defend themselves when they have been involved in a crash after urgent duty driving or during urgent duty driving. Police officers have to meet some tests in terms of the commissioner's guidelines and the public interest test. We have sought clarity on those points. How does the minister envisage a police officer could demonstrate the public interest test that is in this bill? Is the minister able to answer the very clear questions that have been put to her by the member for Mindarie and provide reassurance to the house in any definite way?

Mrs L.M. HARVEY: It is pretty clear that we have a difference of opinion here, member for Midland. I wholeheartedly believe that we are providing a defence to police officers in circumstances of reckless and dangerous driving.

Mrs M.H. Roberts: What our point is —

Mrs L.M. HARVEY: Let me finish!

Mrs M.H. Roberts: Just because you believe it doesn't make it true.

The ACTING SPEAKER: Member for Midland!

Mrs M.H. Roberts: Provide some evidence.

The ACTING SPEAKER: Members! Member for Midland, you have spoken. I do not want to hear anything. Let us hear the answer; then you will have your opportunity.

Mrs L.M. HARVEY: Thank you, Mr Acting Speaker. I believe we have a difference of opinion. I believe that in providing this defence to police officers we are giving them a defence provision that was not available to them before. I do not believe that we are making it tougher for police officers in any way, shape or form. We are giving them something they have asked for and require, and which will make it easier for them to defend themselves in certain circumstances of reckless driving and dangerous driving. I would not bring this legislation to the house if I did not believe that police officers need it. Police officers are acting in the public interest and are out there doing a very tough job. They need the support of this house and this legislation. I seek the support of members opposite to bring it through.

Mrs M.H. ROBERTS: Just because the minister believes something does not make it true. The minister has been asked by the opposition on what evidence she bases those beliefs. She has said that we should take her on trust. She says, "I wouldn't bring it here unless I thought it was really, really good and I didn't really, really believe that it was going to support police officers." We want more than that. We want the evidence. We want the facts. We want the minister to be able to demonstrate it to an intelligent man, the member for Mindarie, who is an experienced lawyer who has defended police officers in these circumstances. She needs to provide the evidence to him that these laws will work and that police will be better off. The minister cannot just sit there and say that it is just a difference of opinion and that she thinks it will help police officers and that the member for Mindarie thinks it will not. That is not how it works. This is the consideration in detail stage. The minister is there to answer questions. If all she can do is say things such as, "I really want to help police officers. I really think this will work. I gave it to other people and they ticked off on it, and here is the explanatory memorandum; I can read that out", then that is not good enough. The consideration in detail stage is about the minister answering the questions that she is asked. She can sit there contemptuously and just go, "Well, I really, really believe in it and I really hope the opposition will do the right thing and just pass it and let us go home tonight", but that is really poor. The minister has been able to answer very few questions. She has not been able to provide the reassurance that is required. I said at the outset that I am not a lawyer. I have taken advice. The minister's answers have been totally inadequate and practically non-existent. The member for Mindarie has raised some excellent points. It may be that he is wrong. During the second reading debate the minister said that the member for Mindarie is wrong. Now she is saying that we have a difference of opinion: "I say I'm right; he says he's right." That is not the basis on which to make laws. If the member for Mindarie is wrong, the minister needs to tell us how and why he is wrong. How and why will this make it easier for police officers? The member for Mindarie has said that police officers will now have to meet a higher test. That is his argument. He has asked the minister how police officers can meet the requirements of the test that is outlined in the bill, such as the public interest test and meeting the guidelines. The minister cannot or will not outline to the house—I think cannot, perhaps—how police officers can meet that test and how they will be better equipped to be represented in court or to not be charged with, let alone found guilty of, the offences under the Road Traffic Act that are outlined in this amendment bill.

Clause put and passed.

The ACTING SPEAKER: Further clauses?

Mrs M.H. Roberts: There is no point, Mr Acting Speaker; the minister is incapable of answering questions.

Clauses 12 to 14 put and passed.

Title put and passed.

Leave denied to proceed forthwith to third reading.