

**ROAD TRAFFIC AMENDMENT BILL 2010**

*Declaration as Urgent*

**MR R.F. JOHNSON (Hillarys — Leader of the House)** [8.01 pm]: I move —

That in accordance with standing order 168(2), the Road Traffic Amendment Bill 2010 be considered an urgent bill.

I move this motion because there is an expectation on the part of the general public of Western Australia that this bill will be progressed expeditiously through both houses of Parliament. Three particular cases have been highlighted within three months: the famous Ferrari, the Lamborghini and the Mini Cooper. We have discovered other problems that could arise because of difficulties that we have noticed with those cases. We do not want to see those sorts of people unfairly treated. I feel fairly confident that the opposition will agree with this motion to declare this an urgent bill, because the house will not be sitting for four weeks after tomorrow due to the fact that the upper house needs to use our chamber for the next two weeks, and then there are two weeks of school holidays during which neither house will be sitting. Unless we progress this in an expeditious way, we will not be serving the interests of many Western Australians who expect us to deal with this legislation in this way.

**MR M. McGOWAN (Rockingham)** [8.02 pm]: The opposition is agreeable to the motion moved by the Leader of the House to deal with this legislation in a more urgent fashion than is ordinarily the case. It is important legislation, and injustices have been caused to members of our community as a result of the existing law. We know that repairing the existing law is an important job that needs to be done. However, we also are of the view that the amendments proposed by the government, which we are supportive of because they improve the existing situation, could be improved further, and we will propose some amendments to civilise those laws and make them better. We will be doing that, but I understand the importance of dealing with this legislation in a sensible and expeditious fashion. The opposition will be moving amendments, and we hope that the government will see the sense in what we are proposing to try to make the laws fairer and more understanding of the situations that confront people in their everyday lives in this state.

Question put and passed.

*Second Reading*

Resumed from 9 March.

**MS M.M. QUIRK (Girrawheen)** [8.04 pm]: Whenever we discuss the hoon laws brought in by the Barnett government, I am reminded of the famous lyrics written by W.S. Gilbert—the immortal words in the operetta *The Mikado*, when the title character sings —

My object all sublime  
I shall achieve in time —  
To let the punishment fit the crime —  
The punishment fit the crime;

Why these lines are apt and why there has been such a community outcry about the present law is that the punishment does not fit the crime. The punishment was meted out, in the instances the minister has just mentioned, to a third party; someone who not only did not commit the crime, but also was unaware of it even having been committed. The impoundment of the vehicle has become the central focus. The adjudication by a court, the actual finding of guilt and the passing of sentence on the actual offender are now mere afterthoughts. As a community, I think we should be concerned that the legitimate and proper role of the courts is being usurped and, in its place, harsh punishment is being imposed without due process.

The bill has been introduced to fix anomalies in the government's existing hoon legislation that came into force late last year. Early this year, the application of the current laws received highly unfavourable publicity during the so-called yellow Lamborghini saga. In that case the owner of the vehicle had his yellow Lamborghini impounded after a mechanic, who was driving the car, allegedly engaged in hoon driving. I say "allegedly" because the alleged offender has pleaded not guilty and the matter is yet to come before the courts for determination. In that case the owner of the vehicle was without his car for 28 days because he was deemed not to have suffered, in terms of the act, exceptional hardship. This assessment was ostensibly made because the owner had the means to make alternative arrangements. To many in the community this case defied common sense. The owner did not authorise the car to be driven at speed, he was not driving the car—he was not even in the car—yet he was penalised by having his car impounded for 28 days. To add insult to injury, he also incurred a liability for the storage cost. Although these provisions were in the original laws introduced by the Labor

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government, which is something the minister always gratuitously reminds me of whenever he gets the opportunity —

**Mr R.F. Johnson:** And will do so again.

**Ms M.M. QUIRK:** — their inequity and harsh impact on third parties were vastly amplified and exacerbated when the Barnett government amendments increased the impounding period to 28 days.

I need to reiterate—because this is what the opposition is most concerned about—that the impounding is not the primary punishment for the offence that is, and should be, imposed by the courts upon an adjudication of guilt. Under the existing laws, the only circumstances in which a third party can recover the car he owns that was involved in the commission of an offence are in cases of exceptional hardship or when the car used by the alleged offender was hired or stolen. Although “exceptional hardship” is not defined in the legislation—it is something we did actually push for when we debated the matter last—it has been interpreted very narrowly by police, such that most of the recent well-publicised cases fall outside the scope of instances in which release of a third party’s motor vehicle would be permitted.

I need to give praise where praise is due: I was gratified recently that the multipurpose taxi that transports people with disabilities was not impounded because the exceptional hardship test was extended to not only exceptional hardship experienced by the owner of the vehicle but also passengers who had regular, standing appointments to be transported by that taxi. Police found that the impounding of that vehicle would cause hardship to passengers with disabilities and, because of the significant demand for these taxis, those passengers would be unable to make alternative arrangements. I think it is very sensibly viewed as a relevant and appropriate consideration that would militate against the impounding of the taxi.

The other central aspect to the bill is the capacity to substitute and impound the offender’s vehicle for that of the vehicle used in the commission of the offence but which is owned by a third party. This will clearly not apply to offenders who do not own vehicles. In this case I am pleased to note that the release of the third party’s vehicle is not predicated on there being a vehicle to substitute.

As I said, this bill seeks to do two things. Firstly, to make provision to substitute, for impounding purposes, an offender’s vehicle for the one he or she was driving at the time of the commission of the offence, which is owned by a third party. Secondly, it seeks to broaden the circumstances in which a third party’s vehicle can be released other than through the exceptional hardship provisions. These are going to be if a vehicle is being serviced, and that has a broad definition to include cleaned, examined, improved, inspected, painted, repaired, stored and transported; or the vehicle is for sale and being test driven. I fully appreciate why this latter amendment might have occurred as a result of one of the notorious cases we have heard about; therefore, a car dealer must satisfy himself that the driver has a valid licence and the driver must undertake to obey the law. There obviously needs to be an arm’s-length relationship between the dealer and the driver.

One of the issues that arose in all these notorious cases was the issue about the Commissioner of Police not having some overriding discretion to release the vehicle in other circumstances not set out in the legislation. The government has declined to do that, even though there might be manifest unfairness in cases not currently covered by legislation or not foreseen by Parliament or the draftsman. It is hoped that the bill will once and for all close all the loopholes. However, I must concede that situations will arise in the future that we have not foreseen or contemplated, so it seems to me sensible that, were this is to occur, amendments to expand categories of exemption can be made by way of regulation. I commend the government for that provision. I think it is a sensible one. We accept that although regulations will not be able to be drafted and gazetted with any 28-day impounding period, at least there is a capacity to close any loopholes promptly, which of course avoids the need to go back to Parliament, with all the attendant delays.

I also notice that the release of the third-party vehicle is not automatic even if it falls within one of the listed exemptions. I am assured, however, that there is a general policy by police that the impounded vehicle will be returned within 48 hours of submission of the supporting documentation. It also appears that even if the third-party owner can establish that he is entitled to have his vehicle released, the amendments do not alter the situation that the commissioner can refuse to release the vehicle if the fees are not paid.

*Point of Order*

**Mr P. ABETZ:** Mr Acting Speaker —

**Ms M.M. QUIRK:** I am refreshing my memory, member. I would not even go there!

**The ACTING SPEAKER (Mr P.B. Watson):** Member, can you sit down while he takes a point of order, please.

**Mr P. ABETZ:** In light of the fact that the member for Albany is in the chair and, therefore, able to —

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**The ACTING SPEAKER:** Member, you do not refer to me as member for Albany; you refer to me as Acting Speaker.

**Mr P. ABETZ:** Yes, you are the Acting Speaker, but I said in light of the fact that the member for Albany is in the Speaker's chair.

**The ACTING SPEAKER:** No. Did you understand what I said? I said you refer to me as Acting Speaker.

**Mr P. ABETZ:** Mr Acting Speaker, I draw your attention to the fact that the member for Girrawheen is reading verbatim from her script, and I understand that earlier today you indicated that was not proper. So I would like a ruling on that. Thank you.

**The ACTING SPEAKER:** Member, I am sure that the member will not be reading verbatim. She can refer to her notes but she cannot read directly from them.

**Ms M.M. QUIRK:** I can assure you, Mr Acting Speaker, I am refreshing my memory, albeit often, from my notes. I also draw the member's attention to the fact that there was a ruling made earlier today in that context. Frankly, if we get accused later on this evening of wasting time, the minister might remember where some of the time wasting has occurred. This is technical legislation, and I want to make sure I get it right, which is something that, frankly, the minister should have thought about when we debated the legislation last year. So, with the member's indulgence, this is a technical point and I want to make sure I get it right.

**The ACTING SPEAKER:** Be sure you only refer to your notes.

*Debate Resumed*

**Ms M.M. QUIRK:** Mr Acting Speaker, as I understand it, it needs to be noted that even if a third-party owner can establish that he is entitled to have his vehicle released, the amendments do not alter the situation that the commissioner can refuse to release that vehicle if fees are not paid. Ultimately, a third-party owner can recover these fees from the offender; however, that is contingent on the conviction of the offender, in which case he becomes liable for all costs. A situation still exists that I think has potential for injustice, but the opposition will not be moving amendments in relation to it; however, there is potential for a third party to be out of pocket in the event that an offender is ultimately acquitted. That needs to be watched closely, and it may be necessary to make further amendments in the future.

The opposition supports this bill, but it will also, as foreshadowed by the member for Rockingham, move some amendments. It will move those amendments with a view to highlighting cases where it believes some further anomalies might be identified in the operation of these laws in the future. There are two categories in particular, the first being taxi owners, whereby the offender is the person leasing the taxi. Current exceptions permit release only if a vehicle has been hired or stolen. When we say "leased", we do not mean in the hire purchase or car leasing sense, but in the sense of the relationship between a taxi owner and another driver who is leasing the vehicle from him. We believe that situation could potentially arise. The second situation is that of the offender being an employee who is not authorised to drive his employer's business vehicle in a manner leading to charges. We believe an amendment could usefully be made to clarify the situation.

We also believe that there is some merit in moving an amendment designed to give the commissioner some residual discretion in cases where the exceptional hardship provisions are not made out, but the case does not fall within one of the exceptions. This residual discretion would only arise when it was manifestly unfair and unjust if the vehicle was not released—so in fairly limited circumstances—but, if members like, they would be the hardship cases.

On behalf of the opposition, I promised that we would not hamper the expeditious passage of this bill through the Parliament because we want to ensure that future injustices are minimised, or, better still, avoided altogether. However, it would be remiss of me not to express the opposition's disappointment and concern that, less than seven months after the minister brought his first bit of hoon legislation into this Parliament, we have had to amend it. These anomalies and loopholes were totally predictable and avoidable. Not only did the opposition point out that there was a very real prospect that the legislation we were debating could result in considerable injustice being caused to third parties if the laws were applied too arbitrarily, but also, as I understand from reading the newspapers, some members of his own party room might have also pointed that out to the minister. When we raised those concerns the minister peremptorily dismissed them and said he wanted to keep the laws simple so as not to cause confusion; what has occurred over the past few months is nothing short of confusion.

We should be mindful, also, that these laws apparently were given the imprimatur of cabinet not once, but twice. It beggars belief that these issues were not identified and remedied by the minister's colleagues. That speaks volumes about the superficial scrutiny that proposed laws receive under the Barnett cabinet process.

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The cynics amongst us might contend that the objective was less about translating good public policy into good laws; it was more about talking tough on law and order. That would certainly explain why the minister has only a passing interest in the content of the legislation. It might also explain why, when the loophole was exposed, the minister originally defended the laws. He took some time to acknowledge that there even was a flaw in the legislation and he took even longer to undertake that he would review the legislation and, later still and finally, introduce amendments. An alternative explanation of what has preceded the introduction of these laws this week is that the hubris of the government has been exposed. The government was so arrogantly preoccupied with its law and order mantra that accuracy, detail and proportionality were the casualties.

Harking back to those immortal lines of *The Mikado*, let us hope that through this bill we will achieve in time a more equitable and fairer law that gets the balance right and punishes offenders rather than innocent third parties. This government's efforts to date are less than sublime.

The minister should now be acutely aware that haste makes waste. His crash and crash-through approach can be expensive, especially when Lamborghinis are involved. I present the minister with a memento of this unfortunate saga. It is a miniature yellow Lamborghini. I hope the minister will place it in a prominent place and that it will serve as a constant reminder that although getting it wrong is embarrassing, it is also eminently preventable.

**The ACTING SPEAKER (Mr P.B. Watson):** I need to find out whether that needs to be tabled!

**MR J.R. QUIGLEY (Mindarie) [8.20 pm]:** There is a fault line developing, which is clearly identifiable by the public of Western Australia, between the approach of this government to issues colloquially termed "law and order" and the approach of the opposition. The difference is that Labor is tough on hoons; it was the Labor government that first brought in seizure of hoon vehicle laws, but they were aimed at the hoon drivers themselves and not innocent third parties. Labor is tough and determined, in both government and opposition, that people who behave in a manner defined as "hoon" and who commit impoundable offences under the road traffic code are dealt with in a very tough fashion. However, unlike the government, as much effort as we will put in and as much support as we will give to the government in dealing with these aberrant drivers, we will equally try to protect the innocent. I have not heard any concern from the government over the past 18 months for the protection of the rights of the innocent. We have only heard tough talk about the guilty. To draw an analogy in gardening, if the government saw weeds growing in the lawn, it would throw a blanket on the weeds and kill not only the weeds but also half the lawn, and it would disregard that as collateral damage; it got the weeds but killed three square metres of good turf. However, Labor, whether in government or opposition, having regard for the innocent, would be more precise and take more care and precision in ensuring that we precisely killed the weeds and did not damage the surrounding turf. If I extrapolate the analogy a bit further in relation to this Road Traffic Amendment Bill that is before the chamber, Labor originally introduced the confiscation of vehicles for an initial period of two days. It did not matter whether it was the driver's parents' vehicle, an employer's vehicle or anyone else's vehicle; it did not have an undue consequence for the innocent. It sharpened the family's thinking a bit because mum and dad could lose the car for Saturday and Sunday if the car were seized on Friday night.

**Mr C.C. Porter:** So two days, or even four, for an innocent person is acceptable.

**Mr J.R. QUIGLEY:** But 28 days —

**Mr C.C. Porter:** You're saying that an innocent person can be punished for just a short period of time.

**Mr J.R. QUIGLEY:** We must look at the consequences. I have only 20 minutes but the Attorney General raises a good point. However, there is no ongoing consequence for the family or the business; there is no inordinate consequence. Remember that the Attorney General is a man of letters and is learned in the law. He has never held himself out to be a spokesperson for justice; it is a different concept to have one's head around the actual black-letter law, and dispensing justice is an entirely different process that requires balance and wisdom. If a family loses its car or is denied the use of its car for Saturday and Sunday, it is an inconvenience; if a family loses a car through no fault of its own for 28 days, it could affect employment, viability of business and a number of other things that I will soon demonstrate. That concept is lost on the government, which explains the nature of interjection. These amendments did not come forward because the first law officer of the state of Western Australia counselled the Minister for Police to say that there was capacity for injustice and that therefore the laws needed to be finetuned to avoid injustice; members should think about how it happened. Dr Nugawela lost his vehicle because the service agent was said to be committing an impoundable offence—reckless driving and driving at more than 45 kilometres per hour over the speed limit. The police minister's response to that was, "He's a wealthy doctor; let him go hire another vehicle." If we apply that response across the range of people to whom this could have happened, it could have happened to a struggling family. The police minister's response would be, "Tell the struggling husband to go and hire another vehicle." The Minister for Police did not turn because the first law officer of the state of Western Australia could see and identify a

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potential injustice; that is not why the police minister changed his mind. The police minister changed his mind because he went on his favourite talkback radio show and was smashed by the 6PR demographic, who howled at him for fostering injustice in Western Australia. It was only after he was hammered on Howard Sattler's program that he took a step back, drew a breath and said, "We've got to do something because we're not getting more votes; we're losing votes because even the people who are most vociferous against hoons are now turning on me. I've got to go backwards". It did not arise out of an identification of any sense of injustice; that is not in the government's thinking at all.

The Labor Party supports these amendments, but members should think about what happened at the time the Minister for Police backflipped. I can always remember—I have said it before in this chamber—that Paul Keating gave one of the greatest one-liners on backflips: "They're okay so long as you do them gracefully and land on your feet." But the Minister for Police belly flopped; it really took the wind out of him, because he then said to Howard Sattler, "Look, Howard, when we pass these laws we can't think of every circumstance." We are back here today because two high-publicity circumstances have caused the government embarrassment, and if they were allowed to continue, it would cost the government votes rather than bringing it votes. It is that simple. This has not come about as a result of an identification of possible injustice; it is simply an arithmetical calculation: "Will this provision win us more votes or cost us more votes?" Initially, when the government brought this legislation in, it was going to win it more votes. When the Minister for Police was howled down on 6PR and quite rightly challenged by Howard Sattler over the injustice of this legislation, he backflipped and said, "I can't think of everything." I am amazed that the first law officer of Western Australia had not counselled the Minister for Police in that regard before he got into that embarrassing situation on public radio. The Minister for Police cannot think of everything, and he has addressed two high-profile cases that have gone belly up for him in the media, but he has gone no further.

If he took some advice from the Attorney General, the Attorney General would be able to say, "This won't be the limit of it; there will be further injustices." As I said during the mandatory sentencing debate, the Attorney General is not interested in injustice. He is handcuffed to the extreme law and order approach of the Minister for Police, and he will suffer for it in the long term. It is not as though someone took him along and manacled him to the Minister for Police; he willingly put the cuff on and said, "I'm with you, minister. We will become extreme and we won't care about justice. We'll look to see how many votes we can get." As always with pendulums, they go too far; then the votes start leaking, as they did on the Howard Sattler program, and the minister had to say, "We've got to change this; we'll change this now."

I will give members some examples that go beyond the amendments contained in the bill before the chamber. The shadow Minister for Police will be moving some amendments to the bill to deal with, as she has said, the employer-employee situation. I ask members to think of a small business person—a florist—who asks an employee to deliver flowers. The employee is a young girl. The employee has stopped at the traffic lights, and when the lights change to green, she plants her foot and accelerates the vehicle heavily, and smoke is emitted from one of the wheels. Under section 62A of the Road Traffic Act, if smoke comes from one or more of the vehicle's tyres, or a substance is left on the road, that is an impounding offence. Therefore, the girl's employer—the florist—will lose her car for 28 days. That will affect the viability of that business. That is why the shadow Minister for Police says that we need to look further at the employer-employee situation.

Another example is a taxidriver who owns his vehicle and leases his vehicle to another driver. If that lessee taxidriver were to commit a similar offence, the owner of that vehicle would lose his income for his family—just because he was a silly taxi owner and was trying to get more taxis on the road by leasing out his vehicle to another driver for the night shift.

I will give another example that is even more disturbing. This example has caused Labor, on thinking about it, to introduce into this legislation the notion that one of the further exceptions should be that the Commissioner of Police—the Commissioner of Police; no-one else—shall release the vehicle subject to an application under this section if he is satisfied that failure to release the vehicle would be manifestly unjust or unfair. I know that that is too much of an ethereal concept for the first law officer of Western Australia to understand. I say that because when we discussed mandatory sentencing, the first law officer of Western Australia said, "We cannot have you Labor people introducing into mandatory sentencing a concept that turns upon manifest unfairness, because magistrates might seize upon manifest unfairness." I said to the Attorney, "Don't you trust the judges?", and he said—disgracefully as the first law officer—"No, we don't; we wouldn't trust the judges, we wouldn't trust the judiciary of Western Australia, to have the discretion to exclude mandatory sentencing on the basis of manifest unfairness." He said he would not trust the judiciary.

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So what happened in the first case that arose under the new mandatory sentencing laws? A woman who was labouring under a mental disability—a mental patient who was not being properly medicated—lashed out at a public officer and was charged under these new laws.

*Point of Order*

**Mr R.F. JOHNSON:** Mr Acting Speaker, we are discussing the hoon legislation tonight. The member for Mindarie has now gone onto the mandatory sentencing legislation for assaults against police officers. He is talking about a recent case. That has nothing to do with this bill whatsoever.

**Mr T.G. STEPHENS:** On that point of order, Mr Acting Speaker, clearly the member for Mindarie is pointing out the need for balance, and how this government has, in its excesses, lost balance. It is most appropriate that he use similar examples of this government's legislation that drive home the fact that the government has not been able to achieve balance in its legislation. That is totally apt to the matter before the house.

**The ACTING SPEAKER (Mr P.B. Watson):** There is no point of order. The member can mention these things very briefly but he must get back to the bill.

*Debate Resumed*

**Mr J.R. QUIGLEY:** I will be very brief. When the person was arrested and the police were looking at the mandatory sentencing, they suddenly had to downgrade the charge to avoid committing an injustice—an injustice that the first law officer of Western Australia could not comprehend at the time of the debate.

Now I come to this particular charge. I will give members a hypothetical example of a single mother with three children living in state housing in Merriwa in my electorate of Mindarie. That is not uncommon in my electorate. She has a son who is 17 or 18 and is training for a trade. She is working as a teaching aide at Ballajura Community College to supplement her income so that she can look after her three children. She lends her vehicle to her son to go to the trade training class at Swan TAFE because we do not have very good public transport in the far northern suburbs, and certainly no transport that can get her son to Swan TAFE for trade training. The son has no traffic record, has given no indication of irresponsibility on the road and has not lost any demerit points. On the way to the trade training centre he, unfortunately, accelerates and takes a corner too fast and a policeman notices some smoke coming from one of the tyres and the vehicle is impounded for 28 days. Let us say that, even worse, at 8.45 am, when most children have gone inside, he exceeds the speed limit by driving through a school zone at 85 kilometres an hour rather than 40 kilometres an hour. Rightly so, we are tough on him and he is charged with reckless driving. However, the penalty for a first offence for reckless driving is 40 penalty units, a \$2 000 fine and the offender is liable to arrest. Let us say that the officer arrests him and takes him to the lockup. The vehicle is impounded and the boy, who has done nothing wrong before, does the right thing and pleads guilty when presented to the magistrate in the morning. Because there is a term of imprisonment provided for, not exceeding nine months, the presiding magistrate gives him a \$1 500 fine, three months in jail —

**Mr C.C. Porter:** For a first offence? That is not right. You know that is not true.

**Mr J.R. QUIGLEY:** That is possible of happening under this legislation, Attorney General. Does the Attorney General want me to read the legislation to him? I will read the legislation. I am not reading my notes; I am reading legislation, so please do not interrupt me. For a first offence, the penalty is a fine of 40 penalty units or imprisonment for nine months and, in any event, the court convicting shall order the offender to be disqualified from holding or obtaining a driver's licence for a period of not less than six months. Whatever penalty the magistrate strikes, the very next morning the hoon is either fined heavily or imprisoned and his licence is suspended. He is dealt with and we can all be satisfied that he is off the road and has received his punishment. However, look at the consequences —

**Mr C.C. Porter:** What about the children near the school who experienced a driver going through the school zone at 85 kilometres an hour?

**Mr J.R. QUIGLEY:** He has been given his punishment. He has been sent to prison for three months and he has lost his licence.

**Mr C.C. Porter** interjected.

**Mr J.R. QUIGLEY:** I am not taking interjections from the peanut gallery because I have only three minutes left. He is dealt with by whatever penalty, but the mother loses her car for 28 days, even though she is innocent. She cannot visit her child in Princess Margaret hospital because there is no direct transport from Merriwa. She cannot get to her job as a teacher's aide at Ballajura Senior High School. This is a hypothetical example.

Several members interjected.

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**The ACTING SPEAKER (Mr P.B. Watson):** Member for Wanneroo, I call you to order for the first time.

**Mr J.R. QUIGLEY:** Do members not think that in the circumstances where the offender has already been punished and where the innocent mother cannot visit her sick child in hospital and is going to lose her job, there has got to be a residual discretion with the Commissioner of Police? In the mandatory sentencing debate, the first law officer of Western Australia —

Several members interjected.

**The ACTING SPEAKER:** I am sure that all members who want to comment will have the opportunity to talk on this bill. At the moment, the member for Mindarie has the call. That is who I want to hear.

[Member's time extended.]

**Mr J.R. QUIGLEY:** In these particular cases, we are sure that the Commissioner of Police, who must have been embarrassed over the Lamborghini episode when his hands were tied, would like to consider this woman's circumstances: her 17-year-old son is in the slammer for what he has done outside a school, his licence has been suspended and he has been adequately punished. Why should they keep hold of mum's car and stop this poor woman getting to work and to Princess Margaret hospital to visit her youngest child? I can understand why the Attorney General, the first law officer of Western Australia, is trying to shout me down. It is because he has no idea of any of this. He has no concept of justice. He has never stood up for the rights of a person in his life. He has been a prosecutor, but he has never stood up for the rights of an innocent third party in his life.

In the mandatory sentencing debate, both the Attorney General and his partner in handcuffs, the honourable Minister for Police, both said that they do not trust the judiciary to exercise a discretion and that it is mandatory to lock up offenders.

Several members interjected.

**The ACTING SPEAKER:** Attorney General, I call you to order for the first time.

**Mr J.R. QUIGLEY:** Thank you for the protection from all these interjections, Mr Acting Speaker. I am grateful.

The Attorney General clearly said in debate on the mandatory sentencing legislation when I interjected and asked, "Don't you trust the judiciary?" that he did not trust them. What a disgraceful thing for the first law officer to say. Now I throw the challenge down to the honourable Minister for Police. The Labor amendment provides for a residual discretion in extreme cases, such as the case that I have just described. It is not for these judges or magistrates of whom the government has such a terribly low opinion; and not for these magistrates and judges who the government says cannot be trusted with the discretion. The Labor amendment to be moved this evening will be that in a case like this, where a single mother has lent the car to her 17-year-old son to get to trade training and he has accelerated too fast and some smoke is emitted from one wheel, she can write to the Commissioner of Police and say, "My son has been jailed under section 60, and he has lost his licence; he has been heavily punished, but if I do not get my car back, Mr Commissioner, I cannot visit my daughter in Princess Margaret hospital and I cannot get over to the Ballajura Senior High School to do my teacher's aide duties to supplement my income." Do members not think that the Commissioner of Police would want to listen to a lady like that and decide whether or not, in all of those circumstances, it is manifestly unjust or unfair? This discretion that we are proposing is not to sit with or lie with the judges and the magistrates, who have been demeaned and not trusted by the first law officer and the honourable Minister for Police; this is a discretion that we are proposing reside with nobody else but the Commissioner of Police. For the Liberal government to say that this is unacceptable wraps up the notion that the government does not trust the Commissioner of Police to do the right thing by the community.

**Mr M.P. Whitely:** They trust him to declare stop-and-search zones.

**Mr J.R. QUIGLEY:** That is right, but in populism there are arguments of convenience. The member for Bassendean can make his point later.

What I am saying is that if the proposed Labor amendment is voted down by the government this evening, it will be on the basis that it does not trust the Commissioner of Police or perhaps it does not trust Commissioner Karl O'Callaghan in particular. We will not know, until we hear the government's response, whether the government believes he would be an inappropriate person to decide that an impoundment was manifestly unjust or unfair. We must bear in mind that the process of impounding a vehicle is specifically legislated for and is not able to be considered a circumstance of mitigation when the offender comes before the court. The offender therefore cannot go before the court and say that the mother's vehicle has been impounded, she cannot get to Princess Margaret Hospital for Children, she cannot get to her job and she is finished. Alternatively, in the case of the

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florist, the offender cannot go to the court and say that impounding the vehicle will cost the florist's business. That is because, quite rightly, in the process of impounding a vehicle, the legislation specifically provides that an offender cannot raise that in court to mitigate the penalty. It is specifically provided for in the legislation. The impounding of a vehicle is to achieve another purpose: that is, to get hoon's cars off the road immediately, as these offenders can plead not guilty and take nine months to get to a hearing after they have been roaring around the suburbs, such as in the electorate of Mindarie. We want them off the road immediately. We are sick of them out there. We are tough on hoons. But just as tough on hoons as we are, were and still intend to be, by supporting this legislation we are equally vigilant to protect the rights of genuinely innocent people. All our modest provision says is that if it is manifestly unjust or unfair, the offender can apply to the Commissioner of Police and if he or she can convince the Commissioner of Police—no-one else but the Commissioner of Police—that it is manifestly unjust or unfair, the Commissioner of Police might return the vehicle to the offender. To strike down this proposed amendment will inherently and necessarily mean that the government does not trust the Commissioner of Police with such a discretion. That would be just as regrettable as the first law officer saying that he does not trust the magistracy or the judiciary of Western Australia. If the government knocks down this proposed amendment when we move it, it will be saying that it does not trust the Commissioner of Police.

The honourable Minister for Police has already coughed on public radio and said, "I can't think of every circumstance, Howard. We did our best. I can't think of every circumstance. I'll bring a law into Parliament that fixes up the Lamborghini." But before he gets into Parliament to fix up the Lamborghini, there was the situation of the car yard and the Mini Cooper. He said, "Oh, I'll fix that up too." The Minister for Police cannot, nor can any member of this chamber or the very, very learned Attorney General, predict all of the circumstances in the future that will come up that could cause manifest unjustness or manifest unfairness. That is why we say that to protect the innocent it is necessary to make the amendment to these rather harsh laws. We are happy the laws are harsh against hoons and we support their harshness against hoons, but at the same time we, the Labor Party, are eternally vigilant to protect innocent people who could suffer or have their family or business destroyed by an unforeseen application of these harsh laws. We are saying that the only person who should have the determination of whether a situation is manifestly unjust or unfair is the person who has the responsibility of enforcing the law—the Commissioner of Police himself. If this is unacceptable to the government, what the government is telling the community and what the government is telling the Commissioner of Police is, "We don't trust you, Dr O'Callaghan, to be able to identify a grave injustice that could occur." This is not leaving it to the magistracy or the judiciary. I was thinking about that, but the government had so demeaned their capability of identifying an injustice that it is pointless for the opposition to come back and plead with the government that we could take this to a magistrate for review, because the government has already said that it does not trust the magistracy. The government has already said that the magistracy is no good; the magistrates are not capable of performing the function for which they have taken their oath of office—that is, to dispense justice without fear or favour to one and all. The first law officer does not trust them to do that. So, okay; we narrow it down to the Commissioner of Police. What right-minded person in our community could quibble or argue with the notion that when a person not being the owner of the vehicle commits an impoundable offence, which could be smoke coming from one tyre, there could be an injustice to the owner of that vehicle beyond what we have currently imagined in this chamber of the honourable Legislative Assembly on 17 March 2010? We could not have imagined this happening; we could not have imagined this injustice; and we could not have imagined that this lady could have lost her vehicle and then lose her job and not be able to visit her daughter in hospital—all of these consequences—because her 17-year-old son, while on the way to trade training, a son who had had no previous convictions and who had given —

**Mr C.C. Porter:** But who still goes to jail.

**Mr J.R. QUIGLEY:** No, I am talking about now.

**Mr C.C. Porter:** This is a different son now, is it?

**Mr J.R. QUIGLEY:** No.

**Mr C.C. Porter:** Same son, different son —

**The ACTING SPEAKER (Mr P.B. Watson):** Attorney General!

**Mr J.R. QUIGLEY:** The first law officer not only is not following the submission, but also wants to mock justice, and that is the disgraceful thing, because he knows, as I have read out, if he is —

**Mr P. Papalia** interjected.

**Mr J.R. QUIGLEY:** No, member! Member! He knows, as I have read out from section 62A, that an impoundable offence is smoke coming from one tyre. That is it. The son does not go to jail, but she loses her

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vehicle, she loses her ability to visit her sick daughter in hospital, and she loses her job. This son has shown no previous propensity for bad behaviour on the road—none. She has done the right thing the whole way along.

**Mr C.C. Porter** interjected.

**Mr J.R. QUIGLEY:** I know that Mr Attorney cannot see justice, and I am not going to argue that with him. I pity him for that. I laud him and I think it is wonderful that he was locked up in his little study room and got all these degrees, but he should have been out there in the world and seen that there is capacity for injustice.

**MR A.J. WADDELL (Forrestfield)** [8.52 pm]: This bill is a metaphor for this government. It is an attempt to patch up poorly thought-out, knee-jerk, reactionary legislation that is draconian in nature, and, in an equally reactionary, knee-jerk way, the government is more concerned with looking after the commercial sector than looking after working families, working mums and dads and real citizens in our society. That is a fact.

I come from a background in technology. We programmed computers. I dare anyone in this place to program commonsense into a computer. It cannot be done. Computers follow rules, black and white; and that is the problem with this government. It is black and white. It does not see anything to do with commonsense. It thinks it is yes or it is no. There is no grey area for those guys—no grey area whatsoever.

**Mr C.J. Barnett:** What about the case of Claire Murray?

**Mr A.J. WADDELL:** What about the case of Claire Murray?

**Mr C.J. Barnett:** Is that black and white? Did the government show commonsense in its intervention? Yes, it did.

**Mr A.J. WADDELL:** It certainly did not show consistency.

**The ACTING SPEAKER:** Premier, we are talking about a separate bill —

**Mr A.J. WADDELL:** If that was the Premier's attempt to show that this government has a heart and to show what the polls are clearly showing, which is that people think that this government is heartless, careless and does not care about ordinary folks, congratulations, Mr Premier. He made his point. He paid out the money and maybe he saved a woman's life. Congratulations for that. It does not change the fact this government's approach to legislation in this state is black and white and does not leave room for commonsense. That is what people talk to me about. People talk to me about commonsense. Where did commonsense go? When did we stop actually using our brains? When did we stop looking at circumstances and actually start to look at what is the right thing to do? This legislation is the equivalent of locking up the gun. Our legislation was about a couple of days; this is about months.

**Mr R.F. Johnson:** About seven days.

**Mr A.J. WADDELL:** Let me give an example —

**The ACTING SPEAKER:** Member, the Leader of the House wants this dealt with as urgent legislation. Members should be able to make their speeches and get on with it to get this urgent bill through, which is what everybody wants.

**Mr A.J. WADDELL:** Let me give an example. I was approached by a constituent in Forrestfield recently, who called me up quite distraught. The lady told me that her car had been confiscated. She had loaned her car to her son, who, unbeknownst to her, had lost all his demerit points. He claims that he never got the last letter and therefore did not know that his licence had been suspended. I do not know whether that is true or not but the point is that this woman certainly had no knowledge whatsoever that her son did not have a driver's licence. The car was dutifully impounded. She came to me and asked, "What can we do about that?" This was the first instance I had come to deal with impounding legislation. I made a few calls, got caught in a call centre—I understand why people hate automated call centres so much—and eventually got through to the people —

**Mr C.C. Porter:** The member programmed them!

**Mr A.J. WADDELL:** Yes, that is right. I learnt a lesson!

We eventually got through to somebody who was able to give us some advice. We were told we needed to make a case for hardship. We were told to say that this woman is possibly suffering some hardship, and that she could make an application at her local police station. At this time it was about 3.45 pm. I gave her a call to say, "You had better hurry up and get out there", because the local police station in Forrestfield closes its doors at 4.30 pm. It was just before the weekend. She wanted to get her application in as quickly as possible. She literally ran, because she had no vehicle, to make the hardship case. In this case the woman is a worker at Princess Margaret Hospital. We did not collude on the example! She worked in the laundry there. As a consequence, she was required to start work at approximately six in the morning. For members who live in the leafy green suburbs,

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those of us in the eastern corridor of the city tend not to have very good public transport. In fact, buses do not come out when the sun don't shine out there! If a person wants to have any prospect to get into the city at 6.00 am, he or she had better catch a bus around 10 o'clock the previous night, put down a sleeping bag in front of Princess Margaret Hospital and sleep on the pavement! She clearly was in hardship. There was no doubt that she had no capacity whatsoever to get to work. She was the sole income earner for her household. I have to ask: is this not a case of hardship? Clearly we have a person, an innocent party here, who did nothing wrong. She did the right thing by her son, loaned him her car, and the car gets taken away from her. She is now robbed of her capacity to earn an income. She runs down to the police station, puts in the hardship application and waits and waits. Four days later, she gets a response: "That is not hardship; no. You could catch a bus." There are no buses. The response was, "Catch a taxi." What is the point of that? The cost of a taxi from where we are to the city and back would be more than the amount she earns at the hospital. There is no point in that. She was told, "Get a relative to get up early and drive you there." Here we are: the son commits an offence—I will not go into the merits of that—and the mother is punished. Let us bring in another person and punish that person as well! Make that person drive the mother to work in order to make amends for this heinous crime that has occurred.

**Mr R.F. Johnson:** In the case the member is talking about, he is saying, as I understand it, that the son has lost all his demerit points, and that is why the vehicle was taken.

**Mr A.J. WADDELL:** The car had a faulty tail-light, and he got pulled over for the faulty tail-light.

**Mr R.F. Johnson:** The police found out that he had lost his licence.

**Mr A.J. WADDELL:** Yes.

**Mr R.F. Johnson:** Can I tell you that is not my legislation; that is yours. That is the unlicensed drivers' legislation. I have not touched that at all.

**Mr A.J. WADDELL:** The minister does not get it.

Several members interjected.

**The DEPUTY SPEAKER:** Members!

**Mr A.J. WADDELL:** We are not engaging in a race to the bottom. The minister might think we are, but we are not. We are talking about commonsense. We are talking about looking after ordinary working families here. I am saying that we need to be introducing commonsense into the legislation. We have a case here of clear hardship. I have heard this for the past 18 months that I have been here, and, frankly, I am getting sick of it. Government members say that it was our legislation and that we did that. Does this government not have the capacity to learn, because I have the capacity to learn and I have the capacity to see that if something goes wrong, we should apply a fix. This bill is an attempt to apply a fix to a situation, but there is a problem—it does not fix the situation. This bill will not touch the situation I am talking about. At the weekend I went to the Little Athletics in Belmont to see some of my local clubs compete. I parked on the side of the road near a bollard. I swiped my car on the way out and had to send it in for a repair today, so it is getting some bodywork done. This morning, when I was driving that car before I sent it to get the bodywork done, had I inadvertently breached this legislation, that car could have been confiscated. Of course, now that that car is in control of the service agency, under this legislation that car could be released. We have a situation here where the crime potential is the same; it is just that the outcome is different. As it is a service agency, the car would not be impounded, because that would cause an inconvenience to me. That is fine. Why is it that that is what we are trying to fix here but we are not trying to fix the situation in which working families are stopped from earning their living? Why are we not addressing that? Why are we afraid to put into this legislation a little bit of commonsense? In the case that I talked about the woman was ultimately given a choice and told that if she did not turn up to work she would not have a job, but the employer, being very generous of heart, asked why not take some annual leave. So she blew her annual leave staying at home, probably lecturing her son every day about what he had done, and I insisted that she supervised him as he repainted her house as a punishment. But the fact of the matter is that an innocent party here was aggrieved by our legislation.

What the Labor amendments will seek to do is to insert commonsense. All we are saying is let us insert some discretion and commonsense, because by doing that, we insert a human factor into what is machinist law. That human factor understands that the world is not black and white and that we do not want to punish innocent people. We want hoons off the road as much as the next person—there is no doubt about that. We tried to get hoons off the road with the first round of this legislation. This is the third round. It is not working in the way it was intended because it is making innocent people pay a price for a crime that they have not committed. That is not what this place should be about. We should be about protecting rights and not taking them away. The minister can shake his head all he likes.

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**Mr R.F. Johnson:** You do not know what you are talking about, my friend.

**Mr A.J. WADDELL:** I know exactly what I am talking about. I have these people in my electorate. They are the ones who are suffering because of this legislation.

**Mr R.F. Johnson:** You are talking about the wrong legislation.

**Mr A.J. WADDELL:** It does not matter; it is the principle that counts. That is the point, and that is what those opposite do not understand. They do not understand commonsense and they do not understand how the real world actually works.

**MR J.C. KOBELKE (Balcatta)** [9.03 pm]: I rise to speak in support of this legislation, which is an attempt to fix up some of the errors that have been made over the years, particularly by this government, and to the amendments that the opposition will move to try to improve the legislation even further.

If I may start with some comments of a more general nature about the need for a balance in the legislation, the member for Mindarie I think was very good in speaking about this, but I think a further contribution to the importance of balance in legislation is worth making. Over the last decade or two, we have moved away from the situation whereby the law sought to protect the innocent perhaps more than to punish the perpetrators. It used to be that many a lawyer would say it was better that 10 guilty people go free than one innocent person be incarcerated or punished in a major way. I have moved from that position, as I think has the Labor Party and the community. The range of crimes and things that have been happening in our community have caused such concern that there is now a view of compromising that principle a bit, and we are willing to put innocent people at jeopardy, and willing to see, in some cases, innocent people be affected by the law because we really want to make sure that more of the baddies and people committing these crimes and perpetrating things not acceptable to the community have punishment meted out to them. I think we need to be careful that we are not driven by the view that it is the punishment that counts. Too often in the mind of this government, that is what it is about.

The hoon legislation was a former Labor government initiative; it was one of the first state or territory governments in Australia to do it. We thought there was very strong support in the community for legislation that tackled hoons—that is, our anti-hoon laws—in whatever form they took. I will run through some of the development of the anti-hoon legislation in this state later, but the whole reason for the anti-hoon laws was to stop people hooning; it was not to punish them. It was actually to stop the behaviour. But, of course, we do not have objective measures to ascertain whether these different forms of legislation have actually been effective. That has not even been countenanced, and I will return to that later.

Let us not lose sight of how these laws, through their various stages, have developed and what they were really supposed to be about. They were initiated to address the concerns we all saw in our electorates. In Balcatta, I have as much, or more, than any other electorate of people doing wheelies, of street racing, and of people driving dangerously. My constituents want—the same as, I think, everyone else—to see something that will curtail and stop that behaviour. There has been no discussion from the government as to how effective it has been in doing that. More discussion has been had about the punishment, and somehow that has become the target. The discussion has been about how harsh the law can be on people and how heavily they can be punished, not about how effective the government has been in making our streets safer by preventing and curtailing this illegal behaviour, generally called hooning.

I will return to where I began my contribution to the debate. We have seen a shift in that balance. I, for one, while concerned about that, have been willing to shift and say that the community demands that we take action that is seen to be tough and effective against people who break the law. In doing that, we realise that the imposition on innocent people is a bit of a problem. The point of balance is, how far do we want to go with that? The consequence of going too far is that people lose respect for the law, and, potentially, lose respect for our police, which could have a whole lot of quite horrendous consequences. We need to be quite careful about how we move in that area.

One of the issues related to the anti-hoon laws, which goes right to the heart of it, is that there has traditionally been a very clear separation between the role of the police and the role of the courts. In a liberal democracy such as Western Australia it is not generally expected that the police are the prosecutors and convicts. But we have a situation whereby the police, having determined that there has been a breach of the law, will not only arrest and charge, but also punish, without going through the proper process of the court. When the former Labor government brought in this legislation, it accepted that the police could actually impose a penalty.

**Mr C.C. Porter:** Like a speeding fine; it happens all the time.

**Mr J.C. KOBELKE:** I take the interjection; the point is that people have the ability to object and go to court and be heard but they do not in this case.

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**Mr C.C. Porter:** Yes they do.

**Mr J.C. KOBELKE:** We have the first law officer of the state telling me they do.

**Mr C.C. Porter:** They can argue that the offence did not occur.

**Mr J.C. KOBELKE:** After the vehicle has been impounded for 28 days.

**Mr C.C. Porter:** They can argue that immediately.

**Mr J.C. KOBELKE:** If people's cars are impounded under this law, tell me, Attorney General, how they can get a car out of impoundment because they simply do not believe that the police were right.

**Mr C.C. Porter:** They dispute the facts upon which the police say the hooning offence occurred.

**Mr J.C. KOBELKE:** And if the police do not accept that argument?

**Mr C.C. Porter:** The member is telling me that he cannot go to court and argue the point; I am telling him that he can.

**Mr J.C. KOBELKE:** I am saying that people cannot do it until after they have paid the penalty.

**Mr C.C. Porter:** That is simply not correct.

**Mr J.C. KOBELKE:** It is not correct.

**Mr C.C. Porter:** People can argue immediately the facts of what occurred.

**Mr J.C. KOBELKE:** And if the police do not accept that argument and persist and someone's car is impounded, what can he or she do then?

**Mr C.C. Porter:** People can injunct them if they wish.

**Mr J.C. KOBELKE:** We have in the chamber the first law officer of this state who, as already has been pointed out, has absolutely no commonsense. He lives in an ivory tower; he has the qualifications but he has no perspective, no judgement and no commonsense. How can an ordinary citizen in this state, as the member for Forrestfield and the member for Mindarie were talking about, go to the Supreme Court and injunct the Commissioner of Police? We have a first law officer of the state who was in this place to back up the Minister for Police, who simply does not have a clue, and now we note that the first law officer, the Attorney General, does not have a clue! That is where we have got with this government; it has no understanding of justice. Government members have no understanding of the rights of people in a democracy. I thank the Attorney General for his interjection and for clearly putting on the record that we have an Attorney General who has no understanding of justice. It is a travesty that the Attorney General has no understanding of justice and how he can protect the people of Western Australia and provide justice for them.

I will now very briefly go through how this legislation has developed from the original legislation, when the member for Midland was the Commissioner of Police. As indicated, we were one of the first states, I think we were the second state, in Australia —

**Mr R.F. Johnson:** Commissioner? She wasn't the commissioner.

**Mr J.C. KOBELKE:** The minister—sorry; I meant the Minister for Police and Emergency Services.

That early form of impoundment was for only 24 hours and really centred on hooning—that is, street racing and people spinning their tyres. It was watered down by the Liberal Party in the upper house because we wanted the police to be able to act on substantial evidence from the public but that provision was removed. After the 2005 election we put a provision in to allow the police to act on evidence from the public. We also extended what was the definition of “hooning” and allowed it to cover people who were speeding at more than 45 kilometres an hour above the speed limit. The point I am trying to make as I go through this is that the initial concept of hooning, which was people dragging, spinning their wheels and creating noise on the roads, has developed to include a whole lot more than just that which was covered by these impoundment laws.

When I was the Minister for Police and Emergency Services, we extended the legislation again so that we could have vehicles impounded when the driver was unlicensed. It did not cover all forms of failing to have a licence, but when there was unauthorised driving and that loss of licence had related to some sort of court action or fine process, so if people had warning that they had lost their licence and still drove a vehicle, then that became the basis for impoundment. An example of that, of course, is drink-driving, whereby perhaps someone had lost their licence, got an extraordinary licence and then drove in contravention of the conditions of that extraordinary licence. The legislation was further extended on the grounds that the police could impound someone's vehicle from a two-day period to seven days, and it became a 28-day impoundment when it was one of those offences

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for driving when unauthorised and the person had already faced court action. Coming back to that issue, the penalty is imposed by the police, not by the courts. However, we were happy. I had concerns that I expressed in this place and the now Minister for Police, when he was in opposition, totally disagreed. He said it was a nonsense that we had to consider justice and to consider the penalties being imposed without going to court, but we were willing to do that because there was strong public support for it and we saw that as being further effectiveness of the anti-hoon laws. Under the most recent extension of anti-hoon laws by the current government, it became a standard 28 days. Not two days; not seven days—a standard 28 days, with subsequent offences allowing for a three-month impoundment of vehicles, seizure of vehicles and destruction of vehicles. That was a further toughening of the laws that I did not have a problem with. After the three-month period, people have the opportunity to go to court if all those things happened. The real concern that has caused the minister to bring on this legislation derives from the fact that the police can now impose a penalty of 28 days without the matter going to court and without the discretion to be able to take account of special circumstances.

These laws were put in place by the Labor government and toughened up by the current government because there was a need to respond to what the community wanted. In my view, there was also a need to talk tough. The current Minister for Police and his government want to talk tough about these things, and I can actually see the value of that; I think there is an issue of community education and of saying, “No, we’ve had enough. We’re really trying to get the message out there that there are real consequences if you’re going to breach these laws.” In that sense, talking tough can have a positive effect, but it is also my personal view that the positive effect of talking up the penalties does not last long. People start to get used to it; they realise how the system actually works. In common with other legislation that I will not talk about here, this legislation brings about tough penalties, heightens community expectations that it will deliver and drives home the point that this is not acceptable behaviour, and that can have a short-term positive effect. There is value in that, but I do not think it actually lasts. The government needs to measure how effective the legislation is, not just talk tough and think that that is the end of it. I am not criticising the government for talking tough, but I want to make it very clear that my personal view is that it has limited effectiveness; I would suggest that its effectiveness disappears after two or three years.

As Minister for Police, I held to the argument that two days was adequate, and the figures supported that view; there were very few second offenders, and after a couple of years there were perhaps two people who had offended for a third time, so it was effective in reducing the number of people involved in hoon activities. It was very hard to measure the effectiveness because we kept expanding the net of who was caught. If we look at the numbers the government has and take a very superficial view of them, it has been a total failure, because there are now thousands being impounded instead of hundreds, but that would not be fair.

**Mr R.F. Johnson** interjected.

**Mr J.C. KOBELKE:** This government made it 28 days.

**Mr R.F. Johnson** interjected.

**Mr J.C. KOBELKE:** My point is that that would be a very superficial way of looking at it, and I do not accept that as valid. But where is the data to show how effective it is? If the minister is arguing about the legislation having effect rather than just grandstanding, we should have the data to show the effect of the legislation. That does not appear in the second reading speech and it is not something that the minister has presented to the house. We should really be looking at the effectiveness and not just the deterrent effect of talking tough. We need to be careful that we have struck a balance between making sure we can be effective against people who are involved in the range of offences we now refer to as “hoon driving”, even though it is now a very wide set of provisions, and making sure that we do not impose an unacceptable and unreasonable burden on people who have done nothing—people who are totally innocent but who have been caught up in this legislation. This legislation is tough in terms of the loss of the vehicle. It is also imposed without the matter going to court, and with very little discretion by the police. The only discretion that is available to the police is if there is exceptional hardship. The police have taken an extremely narrow view of what amounts to exceptional hardship. We really do need to address that matter. We want to ensure that this law is fair and effective. It is for that reason that the member for Girrawheen, as the opposition spokesperson for police, has prepared some amendments to this legislation that I believe are very fair and reasonable.

[Member’s time extended.]

**Mr J.C. KOBELKE:** Thank you, Mr Deputy Speaker, for that extension. I will try to not use it all.

The point I want to make is that we must try to maintain balance in this debate. The minister has seen what happens when there is a loss of balance. That loss of balance has caused the minister to do a backflip and to

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move from a situation in which he was not willing to take any action, to realising there is a real problem. The problem is that if people are saying that this is an unfair law, the populace in general may lose faith that the law works. We are facing a big battle in that area anyway. Many of my constituents believe that the law does not provide justice. Often that is because they would like the law to be harsher. However, other people are telling me that the law has been too harsh in circumstances in which it should not have been so harsh. The majority of people want the law to be harsher. So, we already have a situation in which there is real concern about the effectiveness of this law, and that is leading to a lack of respect for the law and for the justice system.

We see regularly on television how innocent people have been suffering from this law. As I have said, I am concerned that that creates the potential to bring the law into disrepute. I am also concerned that that may lead people to lose respect for our police. Our police do an absolutely fantastic job. They do an incredibly difficult job. They often have to confront people in situations in which they themselves are in some danger. The fact that they are seeking to uphold and enforce the law means that they do not have an easy job. They often have to take the brunt when confronting people and telling them that they are going to be arrested. That makes it difficult for the police to maintain the very positive relationship that they have with the public in general. The police work hard at maintaining that positive relationship. We should not undermine that by putting the police in a situation in which they are enforcing a law that may be seen to be unjust, harsh and unreasonable. As I have said, the police officers often have to take the brunt of that, because they are the ones who are imposing the penalty, not the courts. So we need to be very careful that we are not, in seeking to enforce the law and make our streets safer, undermining that whole principle by introducing a law that may be unfair and unjust in its application. Even though this law may have an unfair impact on only a small number of people, if too high a profile is created through the media, it will be totally counterproductive.

We certainly support the government's attempt to make this law fairer and more workable, because we want to ensure that the public will not lose respect for the law. Of course we on this side would not mind if the public were to lose respect for the government. It is very hard for us to find respect for this government. But that is not what we are dealing with. This is not the law of this government. This is the law of this Parliament. This is the law of this state. If people lose respect for the law of the state, the state will be the loser.

I am not going to use all my time, Mr Deputy Speaker, because we need to progress this legislation. We believe that there is a need to fix this problem. We want to assist the government to go even further in making this law fairer and more workable. We want this law to be effective in helping to address the behaviour of a minority in the community who need to be brought to book and suffer the penalty. But we do not want to get to a situation in which people who are totally innocent will bear the brunt of a law that simply does not work.

**MR W.J. JOHNSTON (Cannington)** [9.25 pm]: I will speak on the Road Traffic Amendment Bill 2010 for a couple of reasons. It is not to say to the minister, "We told you so," although, of course, we did, and nor is it to go on at length about the lack of competence of the minister, because it is being said in such tremendous detail that we all understand the limitations of his abilities. I will draw members' attention to the limitations of the law, as applied by the minister. A resident in my electorate, Mr Tony Moisley, had his truck seized for 28 days under the hoon law. The minister cannot have it both ways. He cannot increase the penalty and say that this is not his problem. He must accept responsibility for the decisions that he makes. Mr Moisley is a small businessman in my electorate and the seizure of the truck has affected his business. He has a contract to dispose of unsold cars from auction houses. Some of the cars that go to an auction house are not in good condition and remain unsold. Mr Moisley has a contract to dispose of those vehicles. The seized truck was the only flat-bed truck he had. He was not able to fulfil his contractual obligations because his truck had been seized, which meant that he was being penalised. The truck was held by the police for 28 days and when he tried to pick it up, he discovered that the police had misapplied the law and the truck was held for another few days. The point is that the truck was seized because of the behaviour of an employee of Mr Moisley's brother. Mr Moisley had lent the truck to his brother and his brother had allowed another driver to use it. It was that person who caused the vehicle to be seized. The point I make is that the application of the minister's law was unfair in this case.

**Mr R.F. Johnson:** What did he do?

**Mr W.J. JOHNSTON:** The minister can continue to interject if he likes and I will just speak for longer.

**Mr R.F. Johnson:** I just asked what the driver did.

**Mr W.J. JOHNSTON:** The more the minister interjects, the longer I will talk. That is entirely up to him. He is managing the affairs of the house. If the minister wants me to talk longer and slower, then he should interject and we will do it that way.

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The amendment that is proposed by the shadow minister will resolve this type of problem because it would allow the police to return a vehicle when it is unjust for the police to retain the vehicle. This gentleman had applied to the police and the minister replied to my letter. The minister's response states —

I am also advised that Mr Moisley is the registered owner of 11 other vehicles, including a Mitsubishi Truck ... Therefore, the Property Management Division determined that an application submitted by Mr Moisley did not constitute Exceptional Hardship under the *Road Traffic Act 1974*.

The point I make is that although Mr Moisley had 11 other vehicles, none of them was a flat-bed truck. It was manifestly unjust that the police would not return Mr Moisley's flat-bed truck because they did not consider the circumstances to be an exceptional hardship. That is ridiculous. It clearly was an exceptional hardship. The fact that the vehicle was seized under the law was unreasonable.

If the Minister for Police wants to get credit from the residents in the seat of Cannington, he can do something about hoons. I still get the same volume of complaints about hoons when I am in the suburbs that I have received since I was elected in September 2008 or when I was pre-selected as a candidate in May 2008. Sevenoaks Street in Beckenham and Cannington; Celebration Street, Ladywell Street and Brixton Street in Beckenham; Knight Street in Langford; Nicholson Road in Langford and Lynwood; Lynwood Avenue, Fleetwood Road, Iveston Road and Watling Avenue in Lynwood; and Wellington Street and Treasure Road in Queens Park are the streets where residents live who are coming to me all the time and complaining about hoon driving.

The volume of complaints that I receive is no different today from the situation six months or 18 months ago. If the minister wants some credit, rather than putting out media releases and talking about it and making these sorts of mistakes, he should start doing something about getting hoons off our streets.

I would like to draw the minister's attention to two issues in the explanatory memorandum, and in his reply to the second reading debate I would like him to explain what he is saying in that explanatory memorandum. The first issue is on page 1 of the explanatory memorandum, in which the minister states —

The amendments contained in this Bill are intended to address a recently identified market failure relating to the inability to release an impounded vehicle ...

I would like to know what the minister means by "market failure". On page 8 of the explanatory memorandum the minister again says, "These amendments are intended to address a recently identified market failure." The term "market failure" usually refers to activities in an open market of trade. I am not quite sure why the minister is using that term in a bill related to seizing of motor vehicles for drivers who are involved in hoon behaviour, driving without a licence, speeding or any of these other matters contained in the hoon laws. Members know that the minister is not prepared to answer detailed points that are made by Labor members of Parliament. The minister ignores them and because he ignores them, he makes mistakes—like he did with the bill he introduced last year. The minister does not properly address the issues that confront the community. I refer to issues such as those I have raised on behalf of Mr Moisley and issues raised by the members for Forrestfield and Mindarie. It would be good, rather than simply interjecting and behaving like an uneducated person, if the minister actually did his job and paid proper respect to the issues that are raised with him. I would be very pleased to see him do that on this occasion. It is always disappointing to my electors that the minister talks tough on these issues, but we have not yet seen the benefits that he says will occur. He is happy to put out a media release, but I would like to see action.

On behalf of the residents in my electorate, I have just outlined a number of problems that they are constantly raising with me. I am bringing these to the attention of the minister. I would like to see action by the minister on these matters. These are important issues for everybody. I know from talking to other members around this house that these are the same problems that are coming up in their electorates. Rather than being interested in rhetoric, abuse and all these other things that the minister is happy to engage in, we would like to see some action. On behalf of all those constituents in the seat of Cannington, particularly those areas I have outlined in my remarks, I would like to see action rather than rhetoric.

**MR P. PAPALIA (Warnbro)** [9.32 pm]: I want to make a short contribution in much the same spirit as the contribution I made in the debate on the Treasurer's Advance Authorisation Bill 2010. I am not intending in any way to be confrontational.

**Mr C.C. Porter** interjected.

**Mr P. PAPALIA:** I am serious, Attorney General, difficult though it may be to believe. I have been listening to the contributions from this side. I ask that the Minister for Police utilise this debate as an opportunity to assess whether or not the legislation he has introduced, and has had to bring back here to amend, has already resulted in manifest unfairness and has the potential to continue to do so, unless some of the amendments that have been

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proposed by this side are considered, particularly that escape clause that has been suggested by the member for Girrawheen giving the Commissioner of Police the opportunity to assess an unforeseen circumstance—one that we cannot define. The minister has already conceded in the course of an interview with Howard Sattler that he cannot think of every possible scenario. I would suggest that is a concession by the minister that no-one can imagine every possible outcome of this legislation —

**Mr R.F. Johnson:** I never quite said that, actually.

**Mr P. PAPALIA:** I am sorry; I was assuming that was the quote. However, I do recall something similar to that being quoted in the newspaper. Even if the Minister for Police did not say those exact words, I think he would concede that it was an acknowledgement that no single person could imagine every possible scenario.

**Mr R.F. Johnson:** I will tell you exactly what I said.

**Mr P. PAPALIA:** Okay. I noted his response to the examples the members for Forrestfield and Cannington gave him. I agree with the minister that the vehicles in those examples were impounded under different legislation, although I do not know about the example of the truck, but certainly the example given by the member for Forrestfield. The point is that it does not take an enormous leap of imagination to apply exactly that scenario to the instance of a vehicle impoundment because a parent's 17-year-old son, for instance, conducted hooning behaviour with lots of smoke coming from one tyre which resulted in the vehicle impoundment and all of that unfairness —

**Mr R.F. Johnson:** That was hypothetical.

**Mr P. PAPALIA:** No, it was a real situation. It was reported in the newspaper and on television. I am talking about the member for Forrestfield's example. That unfairness was imposed on the mother of the 17-year-old, and subsequently on another family member but in that event the family chose to drive her. The mother was forced to take leave at an inappropriate time because she did not have a vehicle and lives in a place that is not serviced by adequate public transport for her to have caught the bus. It does not take a massive leap of imagination to suggest that that scenario could have taken place because the son drove in a hoon-like fashion. It does not excuse his behaviour. Some backbenchers on the government side earlier on demanded to know what the offence was, what had been done and what type of driving resulted in the impoundment of the vehicle. Apart from the fact that it was in that case not under the hoon legislation, let us consider that it was never the fault of the mother, regardless of the hoon-like behaviour of the individual. It was never the fault of the third party. Although I concede that the minister is trying to make this legislation better to protect drivers of Lamborghinis and Ferraris and those sorts of vehicles, I do not believe that the minister can conceive of, and I do not believe he has covered, every possible scenario.

**Mr R.F. Johnson:** Whether it was a Lamborghini or a Lada, it would not make any difference.

**Mr P. PAPALIA:** I understand. I was being facetious; I am sorry. I do not believe that the amendments proposed by the minister will result in covering every possible opportunity or —

**Mr J.R. Quigley:** Injustice.

**Mr P. PAPALIA:** — injustice that could occur through this legislation. That is all I wanted to say. I wanted to offer that to the minister because I know that often—almost always—debate gets pretty confrontational in this place.

The Labor Party is supporting this legislation. No-one likes hoons. I drive around town and am just as offended at people who hoon past me at enormous speeds or cut me off or lay rubber on the road. It is a source of endless complaints to my office, as it is to the offices of all members. No part of the city is immune from it; we all therefore support any effort to attempt to reduce hoon-like behaviour. I am not sure that this legislation will do that. It suggests, in much the same way as some other proposed legislation suggests, that the more those foolish people who perform those acts are punished, the more they will be deterred. I am not sure that the evidence suggests that that is the case. As the member for Balcatta suggested earlier, we have already seen success with the initial legislation. Large numbers of people were caught once, far fewer were caught a second time and very few were caught a third time. That would suggest that the legislation works. I do not know whether we need to up the ante. I agree there may be a short burst of publicity that would help deter some people, but I am not entirely convinced that making it more tough notionally will be effective.

However, I do want to speak up on behalf of people in Western Australia who are concerned about apparent unfairness. It is a growing concern. It is not just a concern with this legislation; it is a concern with a range of legislation that both sides of politics have engaged in for a period of time now. But this particular opportunity

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right now is for us to consider whether the minister could make this legislation better by engaging with the member for Girrawheen on suggested amendments that she has proposed.

**MR R.F. JOHNSON (Hillarys — Minister for Police)** [9.39 pm] — in reply: I will respond to some of the comments that some members opposite have made. I think it is important that I do that. The member for Cannington does not understand what the term “market failure” means. It simply means an identified problem with the laws. That is what it means; okay? That is what it means; I am telling the member. I think it is rather pedantic of the member, but that is what I have come to expect. The member was also very reluctant to tell us the offence that Mr Moisley’s brother’s cousin’s uncle’s first nephew had committed with a flat-bed truck.

**Ms M.M. Quirk** interjected.

**Mr R.F. JOHNSON:** I suggest it makes a lot of difference, because it probably was not a hooning offence. I cannot imagine someone committing a hooning offence with a flat-bed truck. I suggest it was an unlicensed driver. Would that be the case?

**Ms M.M. Quirk:** He’s not in his seat.

**Mr R.F. JOHNSON:** He would not answer me when he was in his seat, so he will not answer me now. I suggest that that is what it was. I know the letter that he sent to me, and I am pretty sure that that is what it was. Let me say, member for Cannington, that we are not dealing with that legislation tonight. That was the legislation that the opposition brought in. I have not touched that legislation at all—not touched it.

**Mr P. Papalia:** It is not a stretch, is it, to think whether or not a similar sort of circumstance could have arisen from hoon driving?

**Mr R.F. JOHNSON:** No. The hardship provisions exist under the opposition’s legislation for unlicensed drivers, as the member for Balcatta knows. He spoke a lot of sense tonight. However, we are not talking about that legislation. I have not touched that, so do not blame me for someone not getting his car back under that legislation.

**Mr W.J. Johnston** interjected.

**Mr R.F. JOHNSON:** Not just at the moment, please. I will come to everything that people have said.

**Mr P. Papalia** interjected.

**Mr R.F. JOHNSON:** The member spoke a lot of commonsense tonight; I have to say that he spoke some sense. However, the member for Forrestfield is one of the bleeding-heart brigade. He came out with all the things that I had created, so he said, which were nothing to do with my legislation.

**Mr A.J. Waddell:** Hardship! Hardship! Do you understand hardship?

**Mr R.F. JOHNSON:** My friend, I understand hardship only too well, but what the member does not understand is that he is arguing about the legislation that the opposition brought in. He is arguing about a case in his electorate and legislation that the opposition brought in, not legislation that I brought in. I have not touched the unlicensed drivers’ legislation.

**Mr A.J. Waddell:** So you’re not aware of any other legislation.

**Mr R.F. JOHNSON:** I would like to present the member with a copy of the bill that the opposition introduced in 2008. It is the unlicensed drivers’ legislation. It was very successful; I supported it. How long is the impounding period for a first offence? It is 28 days, the same as it is for a hoon offence. The same hardship provisions prevail in the government’s legislation as in the opposition’s legislation. The only difference that I made to the hoon legislation was that I basically upped the period of impoundment from seven days to 28 days.

**Mr W.J. Johnston** interjected.

**Mr R.F. JOHNSON:** Yes, under the hoon legislation. I did not do it under the unlicensed drivers’ legislation, which is what the member is talking about.

**Mr W.J. Johnston** interjected.

**Mr R.F. JOHNSON:** My friend, it depends what the vehicle is impounded for. If it is impounded because somebody is an unlicensed driver, that is covered under the opposition’s legislation, and I have not touched that.

**Mr W.J. Johnston:** This is outrageous. You’re so incompetent.

**Mr R.F. JOHNSON:** I have had nothing but absolute rubbish from certain members opposite tonight.

Let me come to the member for Mindarie. I have never heard such hypocrisy in all my life. The member for Mindarie was the one who mentioned the 17-year-old son of a single mother who has two other kids, and one is

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in Princess Margaret Hospital for Children. This was a hypothetical case, of course. It was not a true case. He came up with a hypothetical case. He said that the son accidentally spun one wheel at the traffic lights or something, and the vehicle was impounded. That is not the case; a person does not have his vehicle impounded for accidental smoke. The car will not be impounded under section 62A. Section 62A relates to a person who wilfully—note the word “wilfully”—causes a vehicle to produce smoke. That is a hooning offence. The member for Mindarie is supposed to be an esteemed lawyer —

**Mr P. Papalia:** Does the mother deserve to lose her car?

**Mr R.F. JOHNSON:** In the hypothetical case that the member for Mindarie raised, she would get her vehicle under the terms of hardship. Of course she would. She has a daughter in Princess Margaret Hospital for Children, she is the only breadwinner and she needs the vehicle for work. Of course she would. The member for Balcatta knows that, but of course the member for Mindarie will not let the truth get in the way of a good story! It is absolute rubbish and garbage. Let me come to another point —

**Mr J.R. Quigley:** The doctor did not get his vehicle back under hardship. It was unjust.

**Mr R.F. JOHNSON:** The member for Mindarie criticised me because I made a backflip. Yes, I made a backflip. I was not going to amend the legislation straightaway; I was going to wait for a period of time and do a review of the whole legislation, which I will still do anyway.

**Mr J.R. Quigley:** Until you got belted up on 6PR!

**Mr R.F. JOHNSON:** I listened to the community. I said from the word go that the Lamborghini owner—who I have not got a lot of time for, quite frankly—was treated unfairly. I had sympathy for him.

**Mr J.R. Quigley:** That is our amendment!

**Mr R.F. JOHNSON:** No; that is my amendment, my friend, if you bothered to look at it!

**Mr M. McGowan:** Why didn't you have a lot of time for him?

**Mr R.F. JOHNSON:** We are talking about backflips. I remember when the member for Balcatta brought in his amendments, when hoon legislation was originally discussed in this chamber, it was 48 hours for a first offence. I argued vigorously that that was not enough. That was worn as a badge of honour by all the hoons—“I had my car impounded for 48 hours!” It meant nothing. It was normally over the weekend, so it did not interfere with work or anything like that. We argued vigorously and the public argued vigorously. The minister did a backflip. He changed the legislation from 48 hours to seven days. I applaud him for it. In my view it did not go far enough but we supported it. At least it was going some of the way there. I believe it did act as a slightly greater deterrent.

We went to the election based on facts. We have got the figures that relate to the number of vehicles that have been impounded for a first, second or third offence. I have not got them tonight but at some stage I am happy to let members have those figures. I believe the hoon legislation has a deterrent effect. I am not proud to say how many vehicles we have impounded. There were far more vehicles impounded under the previous government's legislation, something like 6 500, for 28 days. That was for unlicensed drivers. The total number of vehicles impounded for a first, second or third offence under the hoon legislation is about 1 100. It is far fewer than the unlicensed number. The offences are equally dangerous. Some drivers are unlicensed drivers, some drivers may have lost their licence because of a court order through drink-driving, reckless driving or through losing too many demerit points. They are the reasons for unlicensed drivers' vehicles being impounded. It is a damn good job! I applaud the member for Balcatta for bringing that in—absolutely. Twenty per cent of the accidents on our roads are caused by people who have lost their licence in those three areas. I support that legislation 100 per cent—I have not touched it at all—and I support the 28-day impounding period for that; absolutely. We have the hardship provisions in there and we have the hardship provisions under the hoon legislation. They are exactly the same. All I did was extend seven days to 28 days.

Nobody has mentioned the Ferrari tonight. Members have talked about the Lamborghini and the Mini Cooper. The Ferrari was impounded under the former government's legislation.

**Mr P. Papalia:** What Ferrari?

**Mr R.F. JOHNSON:** What Ferrari!

**Mr P. Papalia:** There are only red Ferraris!

**Mr R.F. JOHNSON:** It was just before Christmas. The Ferrari was impounded under the former government's legislation. The amendments I brought in did not come into effect until 1 January. Under the previous government's legislation, the Ferrari was impounded. Not many members seem to be too worried about that. I believe it was a Ferrari from Barbagallo's. A motoring writer took it out and I believe drove extremely

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dangerously, recklessly and could have put other lives at risk. I did not have a problem with that car being impounded. It was only impounded for seven days under the previous government's legislation. The Lamborghini and the Mini Cooper were impounded for 28 days. If there is a real case of hardship, they would have got those back. But the purpose of the amendments tonight in this legislation that I have brought before the Parliament is to address those areas and to cover some other areas, such as loan cars that many people give out. If a company gives out a loan car while it is repairing somebody's vehicle and the person who has the car hoons in that vehicle, it is not fair that the owner of the loan car—the car repairers or the car servicing company—should lose the car for 28 days. I foresaw that and I thought it was totally unfair. We had included that in the bill.

What I said on the Howard Sattler program was that this basically started off six years ago under the Labor government, which it did, and nobody foresaw the events at that stage. It took six years for those events with the Ferrari, Lamborghini and the Mini Cooper to take place. I do not think that is too bad. We have seen the problems there and we are dealing with them. That is why I included in this legislation the ability to be able to create regulations so that if something comes out of the blue that nobody has actually thought of, where it is generally deemed to be unfair in whatever way members want—I am not going to give one person the ability to decide whether it is unfair or not—or there is more than one event, obviously we will do something about it, as I have done here. That is what I said on Howard Sattler's program. I said that the then government did not foresee it and when I was in opposition I did not foresee it either. Nobody foresaw what was going to happen six years later. Those opposite did not and I did not, but we have seen it now.

I will answer a couple of questions that have been asked. The member for Mindarie, who is not here because he is obviously not that interested in this legislation really, was tonight revisiting the 2009 bill. The police last year produced statistics that indicated an increase in repeat hoon behaviour, which I believe justified the increases in impounding periods.

**Mr P. Papalia** interjected.

**Mr R.F. JOHNSON:** I will get it for the member sometime. I cannot get it for him tonight, but I will try to get it.

**Mr P. Papalia:** I would be very interested.

**Mr R.F. JOHNSON:** I am sure the member would be, and I accept what he says. He made a reasonable contribution.

The member for Mindarie also said that it is wrong and that any time a third-party vehicle is impounded is an injustice. These laws—the previous government's laws and the laws I have slightly amended—are aimed at deterring offenders but also making third parties take far greater responsibility for those to whom they lend their vehicles. The member for Balcatta is smiling because he knows what I am saying is true. As the member knows, people have a responsibility under the Road Traffic Act already. If they lend their vehicle to somebody or they let somebody else drive their vehicle, it is their responsibility to inquire and to know that the person has a valid driving licence. That provision is in the Road Traffic Act and has been there for many years. The member knows that and I know that.

The member for Mindarie was going on about the Lamborghini. The Commissioner of Police released the Lamborghini to Dr Nugawela without requiring payment. The alleged offender will become liable if he is convicted.

I have already mentioned that these amendments will cover courtesy cars, which are not one of the recent media cases, and it also covers valet parking.

**Mr P. Papalia:** Leased cars, or not leased cars or hire purchase, but a leased vehicle where the person who owns a vehicle is not the one who is driving it at the time—not a rental.

**Mr R.F. JOHNSON:** Stolen cars and rental cars are automatically given back to the owners.

**Mr P. Papalia:** Not taxis?

**Mr R.F. JOHNSON:** Not taxis, no.

**Mr P. Papalia:** But a taxi can be a source of income for the owner.

**Mr R.F. JOHNSON:** It can, but the member is talking about a lease deal between the taxi owner who owns the plate and leases that vehicle to somebody else. That person has to pay a fee to the taxi plate owner. That is no different to me or the member leasing a vehicle, my friend; there is no difference at all!

**Mr P. Papalia:** You don't think so?

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**Mr R.F. JOHNSON:** No, of course there is not, because the person who has leased the vehicle will have to keep his lease payments up.

**Mr W.J. Johnston:** No; that's not right.

**Mr R.F. JOHNSON:** You have got no idea what you are talking about, sunshine; none at all! I am not taking interjections from the member for Cannington. Mr Deputy Speaker, he did not have the guts to take an interjection from me, so I do not want to take interjections from him.

**Mr W.J. Johnston:** I took interjections from you; I always do!

**Mr R.F. JOHNSON:** No, you did not!

**Mr W.J. Johnston:** Don't be dishonest!

**Mr R.F. JOHNSON:** He has just called me dishonest, Mr Deputy Speaker.

**The DEPUTY SPEAKER:** Order, member for Cannington!

**Mr M. McGowan:** No, he didn't; he said, "Don't be dishonest." That is not actually calling you dishonest.

**Mr R.F. JOHNSON:** He said, "You're dishonest."

**The DEPUTY SPEAKER:** Minister for Police, carry on, please.

**Mr R.F. JOHNSON:** I do not want to delay the house, but I have heard a lot of hypocrisy tonight, I truly have. The legislation before the house tonight corrects the former government's original bill in those areas.

**Mr P. Papalia:** Come on!

**Mr R.F. JOHNSON:** Under the former government's legislation, the Lamborghini would have only been impounded for seven days.

I just want to finish with one more point and make one more comment. I just see red when the member for Mindarie stands because he talks such hypocrisy. I have never seen so much hypocrisy in my life. When we wanted to amend the former government's legislation to make the impoundment period go from 48 hours to seven days, he stood up in this place and said that 48 hours was right and just, and it would not change from that, and that he supported the government's legislation, and that he would not support seven days—blah, blah, blah; it did not take long for the member for Balcatta to bring in amendments to the former government's hoon legislation to increase it to seven days—not a word from the member for Mindarie; not a word! That was a silent backflip because he never admits when he is wrong.

At some stage I will give the member for Forrestfield—perhaps he would like to share it with the member for Cannington—a copy of the Road Traffic Amendment Bill 2008, which is what they were talking about tonight and which had nothing to do with the bill before the house tonight.

**Mr A.J. Waddell** interjected.

**Mr R.F. JOHNSON:** I think my mate the member was showing his ignorance!

Several members interjected.

*Point of Order*

**Mr W.J. JOHNSTON:** The Leader of the House is reflecting on your chairing of tonight's proceedings, Mr Deputy Speaker. He said that when I contributed to the debate, I was not addressing the bill. That clearly reflects on your capabilities as Chair, because you allowed me to continue.

**The DEPUTY SPEAKER:** Member for Cannington, that is not a point of order; I am not sensitive about the reflection on me.

*Debate Resumed*

**Mr R.F. JOHNSON:** Obviously they do not want a copy of that bill because they hate the truth when it comes to them in clear hard copy. I will leave it there. If the members have the good grace to come and collect it, they can read up about the unlicensed driver legislation that both members were talking about tonight, not the hoon legislation, and then they will be much wiser, I assure them! I commend the bill to the house.

Question put and passed.

Bill read a second time.

Mr Rob Johnson; Mr Mark McGowan; Ms Margaret Quirk; Acting Speaker; Mr John Quigley; Mr Tom Stephens; Mr Andrew Waddell; Mr John Kobelke; Mr Bill Johnston; Mr Paul Papalia; Deputy Speaker; Speaker

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Leave denied to proceed forthwith to third reading.

*Consideration in Detail*

**Clauses 1 to 9 put and passed.**

**Clause 10: Section 79D amended —**

**Ms M.M. QUIRK:** I move —

Page 11, after line 9 — To insert —

(a) delete “The Commissioner” and insert:

Subject to section 79EA(5), the Commissioner

The existing section 79D(2) provides that the Commissioner of Police must ensure that an impounded vehicle is not released before the impounding period ends, unless it falls within the exceptions listed in that section, which include the vehicle being stolen or hired, exceptional hardship criteria and further exceptions, which will be subject to amendments that I will move later. This amendment prescribes another exception to allow for the earlier release of an impounded vehicle—namely, that the commissioner considers it should be released in the interests of fairness. Therefore, this amendment will simply tie off the loose ends and make it clear that the commissioner can release a vehicle under section 79EA. Proposed new section 79EA is included in another amendment that I will move shortly.

**Mr R.F. JOHNSON:** The member has moved a consequential amendment to the substantive amendment under new clause 11, does the member agree?

**Ms M.M. Quirk:** Yes.

**Mr R.F. JOHNSON:** I have to tell the member that I will oppose that new clause for reasons that I will state later so, obviously, I am not prepared to accept the amendment to clause 10 that the member has moved.

**Ms M.M. QUIRK:** Perhaps if the minister can indicate his reasons now, we will not unnecessarily waste any time on this amendment. This amendment, if we like, is mechanical; the substantive amendment will be moved later. However, if the minister can maybe foreshadow his objections, it might be helpful to how we conduct consideration in detail.

**Mr R.F. JOHNSON:** I am happy to inform the member that I disagree with proposed section 79EA. I understand it is an attempt to provide a safety net for circumstances that fall outside those prescribed. However, the problem is that although “exceptional hardship” has some obvious meaning, I do not think it is at all clear what would constitute a “manifestly unjust or unfair outcome”; that is just too broad a brush, in my view. The commissioner would have little to direct him as to the exercise of his discretion. There would be no transparency regarding the criteria the commissioner considers, and there would be no guarantee that the commissioner exercised his discretion consistently. This ground would also open the floodgates and every responsible person would apply. The provision says that the commissioner cannot delegate decision making; he will have to deal with thousands of applications and there will be delays in decisions being made. There will be an estimated 12 000 impoundings this financial year. That would require the commissioner being employed full time to work out whether to release vehicles, rather than actually doing the job of overseeing the policing of our state for serious crime. I say upfront that I will not accept the substantive amendment proposed by the member for Girrawheen. I cannot accept clause 10.

I emphasise that this is the purpose of having regulation-making powers, and I promise the opposition that I will use it appropriately. I do not want to possibly create more problems by amending this legislation on the run. A fair bit of time has been spent on the amendments that I presented to the house; they go back to the “Lamborghini” days. With no disrespect to the member for Girrawheen, she has come up with this amendment over the past week and I do not think enough thought has gone into it; I am not prepared to take the risk.

**Mr M.P. Whitely:** Coming from you, that’s incredible. You’re a joke! You really are a joke.

**Mr R.F. JOHNSON:** We think the member for Bassendean is a joke. We think he is a useless member of Parliament and that he wastes his time in here.

**Mr M.P. Whitely:** Oh, do you?

**Mr R.F. JOHNSON:** Yes, we do.

**Mr M.P. Whitely:** I will put that on my CV: “Rob Johnson thinks I’m a joke”.

**The ACTING SPEAKER (Mrs L.M. Harvey):** Member for Bassendean!

Mr Rob Johnson; Mr Mark McGowan; Ms Margaret Quirk; Acting Speaker; Mr John Quigley; Mr Tom Stephens; Mr Andrew Waddell; Mr John Kobelke; Mr Bill Johnston; Mr Paul Papalia; Deputy Speaker; Speaker

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**Mr R.F. JOHNSON:** I accept that the member for Girrawheen has put forward in good faith what she thinks are reasonable amendments. I think that they could drive a coach and horses through the legislation, and I do not want to see the commissioner having to deal with all those applications.

**Ms M.M. Quirk:** He won't. You haven't read it!

**Mr R.F. JOHNSON:** I am sorry, but he would have to oversee all those applications under the legislation. A lot of thought went into the amendments I have put before the house in relation to this amending bill. For that reason, I will save the time of the house and tell the member for Girrawheen that I will not accept the amendments she has put forward.

**Ms M.M. QUIRK:** This is a machinery clause so I will not press the amendment, given that the minister has foreshadowed that he will not accept it. I will move onto the other two amendments and then deal with proposed section 79EA, which sets out the ground of manifest injustice.

Amendment put and a division taken with the following result —

Ayes (20)

Ms L.L. Baker	Mr J.C. Kobelke	Mr P. Papalia	Mr C.J. Tallentire
Ms A.S. Carles	Mr F.M. Logan	Mr J.R. Quigley	Mr P.C. Tinley
Ms J.M. Freeman	Mr M. McGowan	Ms M.M. Quirk	Mr A.J. Waddell
Mr J.N. Hyde	Mrs C.A. Martin	Mrs M.H. Roberts	Mr M.P. Whitely
Mr W.J. Johnston	Mr M.P. Murray	Mr T.G. Stephens	Mr D.A. Templeman ( <i>Teller</i> )

Noes (27)

Mr P. Abetz	Mr G.M. Castrilli	Mr A.P. Jacob	Dr M.D. Nahan
Mr F.A. Alban	Dr E. Constable	Dr G.G. Jacobs	Mr C.C. Porter
Mr C.J. Barnett	Mr M.J. Cowper	Mr R.F. Johnson	Mr D.T. Redman
Mr I.C. Blayney	Mr J.H.D. Day	Mr A. Krsticevic	Mr M.W. Sutherland
Mr J.J.M. Bowler	Mr J.M. Francis	Mr W.R. Marmion	Mr T.K. Waldron
Mr I.M. Britza	Dr K.D. Hames	Mr P.T. Miles	Mr J.E. McGrath ( <i>Teller</i> )
Mr T.R. Buswell	Mrs L.M. Harvey	Ms A.R. Mitchell	

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Pairs

Mr B.S. Wyatt	Mr V.A. Catania
Mr R.H. Cook	Mr B.J. Grylls
Mr P.B. Watson	Mr A.J. Simpson

**Amendment thus negated.**

**Mr M. McGOWAN:** As I understand it, there are colleagues of mine who are much more knowledgeable than I am and who are very concerned about clause 10. Those colleagues of mine will, no doubt, want to raise the many areas of injustice that could potentially apply if our proposed amendments to clause 10 are not passed by the Parliament. Those colleagues of mine have gone to considerable effort to draft these two amendments to clause 10. I will sit down now so that my colleagues can get the call.

**Ms M.M. QUIRK:** I thank the member for Rockingham for his forbearance. I move —

Page 12, after line 29 — To insert —

- (fa) a senior police officer is satisfied that, at the time the offence in respect of which the vehicle was impounded was committed —
- (i) the person who allegedly committed the offence (the *alleged offender*) was an employee of a responsible person for the vehicle; and
  - (ii) the employer of the alleged offender was unaware of the alleged commission of the offence; and
  - (iii) the employer of the alleged offender took all reasonable steps to prevent the commission of the offence; and
  - (iv) the alleged offender was not a responsible person for the vehicle;
- or
- (fb) a senior police officer is satisfied that, at the time the offence in respect of which the vehicle was impounded was committed —
- (i) the vehicle was a taxi within the meaning of the *Taxi Act 1994*; and

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- (ii) the person who allegedly committed the offence (the *alleged offender*) leased the vehicle from a responsible person for the vehicle; and
- (iii) the responsible person for the vehicle was unaware of the commission of the offence; and
- (iv) the responsible person for the vehicle took all reasonable steps to prevent the commission of the offence; and
- (v) the alleged offender was not a responsible person for the vehicle;

or

**Mr R.F. JOHNSON:** I can understand the sentiment of the member's proposed amendment. However, I am concerned that it will not achieve the outcome that the former government and the present government had in mind when these laws were introduced and which have been amended over the years. I will give some more thought to the amendment but I believe that it is too ambiguous at the moment. I am happy to give it more thought. If I decide that I will go either all the way or some of the way towards accepting the member's amendment, I will do that by way of regulation. I certainly would want a lot more time than we have to do that. My main purpose, as the member knows, was to address those areas where we knew there was a problem in the former government's legislation. If former government members would just keep quiet and stop trying to be clever, because I am trying to work with them, believe it or not —

**Mrs C.A. Martin:** We don't believe it.

**Mr R.F. JOHNSON:** I will sit down then. I will not accept the amendment.

**Mr M. McGowan:** It was just a bit of humour.

**Mr R.F. JOHNSON:** It was not. I take insults from the two or three members opposite all the time. Some of them are really nasty. I am a very sensitive person —

**Mr J.R. Quigley:** You're nasty.

**Mr R.F. JOHNSON:** —particularly when I get crap—if I can say that—coming from the member for Mindarie. He is the nastiest person in this chamber. He is the one who calls police officers corrupt. He thinks our police officers are corrupt.

**Mr M. McGowan:** Can we get back to the bill?

**Mr R.F. JOHNSON:** Exactly. I would love to get back to the bill. Perhaps the leader of opposition business can keep some of his more recalcitrant members in line. I would really appreciate it.

**Ms M.M. QUIRK:** I am grateful for the minister's concession that he will at least look at this seriously. These amendments are about a hapless employer whose employee uses the business car in the course of the business and, unbeknown to the employer who owns the car and is the responsible person for the car, the employee commits a hoon offence and the employer is deprived from having the vehicle for 28 days. The minister has said that he is dealing only with those matters that have come to the light of day already. Given the two very good examples of those types of situations that we have heard about tonight from the members for Cannington and Forrestfield, it is not a vast leap to think that similar scenarios could arise under the hoon legislation. Therefore, we believe that it is prudent and wise for the minister to consider these amendments at this time.

Proposed paragraph 79E(fb) is self-explanatory. The owner of a taxi does not drive the taxi for 24 hours a day, seven days a week; he leases the taxi to other drivers. In those circumstances, the owner should not be deprived of the 24-hour use of the taxi when the person who committed the hoon offence was not the owner of the vehicle. This amendment is self-explanatory. We consider it on par with the broadening exceptions that the minister brought in, and we ask the minister to give it serious consideration.

**Mr J.C. KOBELKE:** I rise in support of the amendment moved by the member for Girrawheen. There is a little bit of hope, in that the minister has said he will look more carefully at this, and I urge him to accept this amendment. We know that as new cases come forward, there will be problems with the legislation. The member for Girrawheen is quite rightly addressing a particular issue. It is incumbent upon the minister not to hide behind the fact that two years ago the Labor government brought forward legislation and to say that is the cause of the problem. The minister has to manage the legislation. We brought it in and amended it several times because we were always seeking to enhance it. We were always open to looking at it and to changing things to make sure that it worked.

**Mr R.F. Johnson:** You never took my amendments, ever.

**Mr J.C. KOBELKE:** We took some of them, after a delay.

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**Mr R.F. Johnson:** No, you never took my amendments ever—not on the night, you did not.

**Mr J.C. KOBELKE:** The minister has corrected his earlier statement, because I did take his amendments after further thought and consideration. He can characterise it that way, but I actually took his suggestion.

**Mr R.F. Johnson:** About a year or two later.

**Mr J.C. KOBELKE:** It was not two years, but we took it later. It is now the minister's responsibility to ensure that the legislation is workable and that he removes, where possible, inequities or injustices that are likely to arise from the legislation. The member for Girrawheen has put forward very sensible suggestions with this amendment that go to addressing just one particular area in which problems can arise. I hope that the minister will not be too worried about being caught out because he did not think about this or feels that he has been upstaged because the member for Girrawheen has done the hard work. I ask the minister to look very seriously at accepting this amendment. If the minister is not willing to accept it tonight, then it will go to the other place next week or the week after so he will have a few days to look at it. If he sees the merit in it, which we believe is there, he will be honest enough to say that it is his legislation, regardless of which Labor government brought it in. The minister has the management of it; he needs to make sure, where it can be fine-tuned and improved, that that is his responsibility and he will very seriously look at the recommendation put forward in this amendment and hopefully find merit in it. If he is not willing to do that tonight, then certainly by the time it gets to the other place in a few days' time.

**Mr J.R. QUIGLEY:** I congratulate the member for Girrawheen for the careful drafting of the amendment to clause 10. The reason the minister hesitates and says that he will give it some more thought is because the injustice that the shadow Minister for Police is trying to avoid sticks out as plain as the nose on his face. There would not be a listener to talkback radio who would not readily appreciate the injustice of an employer who hands over the vehicle to an employee in the course of that employment on condition, express or implied, that the employee obeys the road rules when in possession of the employer's vehicle. I am a fifth generation Western Australian and I think that I understand the Australian psyche and there would not be a fair dinkum Aussie who would not be offended by the concept that the boss's vehicle is seized for 28 days because of the actions of an irresponsible employee, who the boss would likely sack in any event for hooning in the company vehicle. For the honourable minister to say that this will all be covered under circumstances of exceptional hardship is —

**Mr R.F. Johnson:** I never said that at all.

**Mr J.R. QUIGLEY:** The minister did, earlier on. That is palpably false, because if it is a fleet vehicle and the employer owns several vehicles, it will be almost impossible for the employer to establish exceptional hardship, unless he can show great damage to the bottom line of the profitability of the company. But mere reduction in profitability of the company would not constitute at law exceptional hardship. Let us be clear. If the government votes down this amendment this evening, it will be a slap in the face for all honest small business operators in Western Australia. For this to come from a Liberal government, which says it supports small business, is incomprehensible; it is breathtaking. When all employers and all small business people read in *The West Australian* in the morning that the government has trashed this saving provision for small business, for the employer, when Labor was trying to protect the employer against the aberrant actions of an employee, it will send a clear message to small business—all business—in Western Australia: "We don't care if we treat you unjustly. We don't care if you suffer innocently. We're not interested. This is about our ego. This amendment was thoughtfully produced by the member for Girrawheen, the shadow Minister for Police, and therefore we are going to trash it. We're going to vote down the protection for employers and small business people."

The minister has the numbers in this place this evening to vote down this amendment, but when he goes on talkback radio to explain why he abandoned small business people and why he abandoned employers, he will be facing the community of Western Australia. Just as the votes started to leak over the Lamborghini, they will start to leak because he is not protecting small business.

**Mr J.J.M. Bowler:** "Lamborguini"?

**Mr J.R. QUIGLEY:** I am sorry, member?

**Mr J.J.M. Bowler:** Lamborguini? Spaghetti?

Several members interjected.

**Mr J.R. QUIGLEY:** It is really important for the Parliament to note that government members, including the Acting Speaker (Mrs L.M. Harvey), are laughing over my pronunciation of the Italian —

**Mr P. PAPALIA:** I would very much like to hear more from the member for Mindarie.

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**Mr R.F. Johnson:** You don't really mean that!

**Mr J.R. QUIGLEY:** It is so very typical of this government that it would argue over syntax and pronunciation while not giving any credence or recognition to a basic concept of justice. Talk about piddling while Rome burns! This government is interested in mocking me for my pronunciation of a particular vehicle whilst not at all concerned about the injustices that will be suffered by small business people and employers.

Several members interjected.

**Mr J.R. QUIGLEY:** Worried? Yes, I understand the attitude of the Liberal government at the moment: it is to mock me over my pronunciation of the make of that particular vehicle. I do not know whether it is linguini or "Lamborghini"; I will just call it spaghetti and all members will know what I mean. It is a yellow thing that was racing around the highways.

That is not the issue; is it? The issue that government members are trying to distract this chamber from is that a Liberal government will leave employers exposed to the wrongful behaviour of employees while they are in possession of a company vehicle. Government members do not care about what happens to business people. They do not care about how the legislation will impact upon their business. They are concerned only at voting down the member for Girrawheen's very sensible amendment.

I turn now to clause 10, proposed new section 79D(2)(fb). It provides that if a senior police officer—that is, inspector or above—is satisfied that a taxi that his officers apprehended committed a hooning offence, which is driving more than 45 kilometres over the speed limit or getting smoke to emit from a tyre, the officer will seize the taxi. Once again, the shadow Minister for Police's very sensible suggestion to this chamber tonight by way of amendment is that if a senior police officer can be satisfied that it was genuinely a taxi within the meaning of the Taxi Act and was operating as such at the time; that the person who was driving the taxi had leased the taxi from the taxi owner; that the taxi owner, the owner of the plates and the vehicle, was unaware that his lessee was committing this offence, or likely to commit this offence; and that he had taken all reasonable steps to ensure, in the terms of his contract with the lessee of the taxi, that the lessee would drive it in an appropriate manner and obey the rules of the road—if the senior police officer is satisfied of all those things—why should the owner of the taxi lose his taxi for 28 days? This is what the minister will have to explain on talkback radio, and all the taxidriviers out there will have their radios on and be listening. I know that members are all thinking about this, but the minister will not be able to come up with a better explanation than the explanation he came up with for Dr Nugawela's Lamborghini. Was that pronunciation okay, Madam Acting Speaker? There we go.

**The ACTING SPEAKER (Mrs L.M. Harvey):** I am sure Hansard will correct the record.

**Mr J.R. QUIGLEY:** What about the concept of justice involved? Was that okay for members? Did they understand the concept of justice and injustice? There is silence. So we are still nitpicking on pronunciation and not worrying about what might happen to the taxidriver. If the taxi, as a lot of these taxis are, is owned by a man or a company—a service company—that owns more than one taxi, it will be next to impossible for the trust running that taxi, or the owner owning that taxi, to establish permanent —

**Mr P. PAPALIA:** I am enthralled. I would like to hear more from the member for Mindarie.

**Mr J.R. QUIGLEY:** It will be impossible in those circumstances for the taxidriver to be able to establish exceptional hardship, because the commissioner can say, "You've got four other taxis. I don't care whether you were innocent or not. I don't care whether it was a taxi and you had no idea." With some of these taxidriviers—I have to be careful here because I do not want to offend people—who are driving part time, I have difficulty sometimes trying to guide them to my home.

**Mr C.C. Porter:** It's your pronunciation.

**Mr J.R. QUIGLEY:** The Attorney thinks that is the problem, does he? He is not worried about the substance of this; he wants to mock me. What does the Attorney think about the justice involved in that?

**Mr C.C. Porter:** You're the only person who appears in this house who has uniquely determined what justice is. That's because you don't understand justice as a process; you only see it as an outcome about which equally rational people might differ.

**Mr J.R. QUIGLEY:** Let us get away from process. Was it just what happened to Dr Nugawela, Attorney?

**Mr C.C. Porter:** That's why we're bringing in these amendments.

**Mr J.R. QUIGLEY:** Was it justice? We could foresee at the time that these things could happen. We were warned at the time that these things could happen. The situation is that the taxidriver would lose his taxi for 28 days. Where is the justice in that? People will not be comforted by the Attorney General's words that it is all

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about the process, and so long as we have the process right, people might differ with the outcome. That is what the Attorney General is saying: as long as we have got the right process, it does not matter what the outcome is because people will disagree. How is the minister going to explain that to the taxidriver who has to go home and tell his wife that they have no income because the person they lease the taxi to has caused the taxi to be confiscated for 28 days?

**Mr P. Papalia:** The process was right.

**Mr J.R. QUIGLEY:** The process was right. That is what he tells his wife—"Don't fret, honey; the process was right; just swallow it whole." What a disgraceful concept to come from the mouth of the first law officer of Western Australia, who is meant to superintend the law and justice. It is not about process. He would have done very well in the nineteenth century, before the judicature acts, when it was all about process and the courts were not about dispensing justice. It was all strict pleading and process. That was 130 years ago now. The Attorney General can tie me down to the time because I am sure he studied it infinitely whilst at university.

The wife of the taxidriver can tell us about justice. She can tell us, and she does not have six law degrees. She could say, "It is horribly unjust that my husband has leased the taxi out to an honest driver, who had no traffic record, and, as a result of an irresponsible act by that driver, I have now got to tell the children that the holiday has to be cancelled, the food will be a bit light on the table for the next 28 days and we've got to go down to Centrelink as we haven't got our income." That is what the Attorney General has to explain to the taxidrivers who will tune in to listen to the result of this debate tomorrow. The Attorney General has got to tell them and explain to them —

**Mr J.M. Francis:** Don't hoon in your taxi and you've got nothing to worry about!

**Mr J.R. QUIGLEY:** It is not his taxi. He has not hooned in it. The member does not get it!

**The ACTING SPEAKER:** Order, members!

**Mr J.R. QUIGLEY:** The taxi owner did not do that.

**Mr J.M. Francis** interjected.

**The ACTING SPEAKER:** Order, member for Jandakot.

**Mr J.R. QUIGLEY:** His driver was doing it—not the taxi owner. The taxi owner loses —

**Mr J.M. Francis:** Has the member ever been in a taxi when the taxidriver has been doing 50 kilometres an hour over the speed limit?

**Mr P. Papalia:** He may not own the vehicle.

**Mr J.M. Francis:** The taxidriver!

**Mr J.R. QUIGLEY:** I have been in a taxi that has been recklessly driven, there is no doubt about that, and I have acted for people who have been injured in taxis.

**Mr M. McGOWAN:** I want to join with the member for Mindarie's arguments. I am not sure whether the Leader of the House is going to gag debate or whatever, but I want to sum the argument up. I detect amongst members of the government back bench that they do not quite understand what the member for Mindarie has been saying.

**Mr R.F. Johnson:** I do not think he understands what he is saying!

**Mr F.A. Alban:** I do not think he understands it himself!

**Mr M. McGOWAN:** And there we go again.

Several members interjected.

**Mr M. McGOWAN:** What he is saying is that where there is an employer, or someone who owns a group of taxis—one, two, three or four taxis—and an employee, without their knowledge, consent and against their advice and instruction, implicit or expressed, hoons in that vehicle, then why should that employer be held responsible and lose his vehicle? It is a sensible and reasonable argument but grounded in commonsense and justice. That is what it is.

A number of government members have been employers. If someone took an employer's vehicle without his or her knowledge or consent and did this, why should the employer be held responsible? That is what the proposed amendment is. I would have thought that would fit very well with government members' personal philosophies. It certainly fits very well with my personal philosophy. That is what the amendment moved by the member for Girrawheen and supported by members on this side is—very reasonable and sensible.

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Secondly, the purpose of the consideration in detail stage of the debate is to examine these issues and, if necessary, correct mistakes in the legislation. That is what we are trying to do. We are trying to correct the mistakes in the legislation or include the things that are missing. If there is a lacuna in the legislation, we fix it. That is what the consideration in detail stage of legislation is to do, and that is what we are proposing to do. What is going on here is eminently reasonable. The fact that we are discussing it at 10.30 pm is unfortunate, but I think it is eminently reasonable that the government accept these amendments or bring back tomorrow amendments drafted by the government. If they meet the ambitions of these amendments, surely that is an improvement to the legislation that will help small businesspeople around Western Australia escape injustice. That is all that is happening here—just to sum it up.

We are not trying to do anything that would help someone who has done the wrong thing to escape the operation of the law—quite the contrary. I urge the minister to take these amendments, to redraft them overnight or to get them redrafted in the morning. The minister should just accept the drafting of the opposition, or commit to putting amendments of this nature into the bill in the upper house, because that is actually what we are here to do as a Parliament. If ministers are not going to accept eminently reasonable amendments that fit with their own personal and political philosophies, what is the point of us all sitting here and discussing this issue? Why do we have these debates? They are not debates in the slightest if ministers are not prepared to take something that is totally grounded in their own personal and political philosophy and accept it. I cannot express it any more clearly than that. That is all we are trying to do here tonight.

**Mr P. PAPALIA:** Just prior to being shut down, I imagine —

**Mr R.F. Johnson:** I'm not going to shut it down.

**Mr P. PAPALIA:** I took very close note of the minister's initial response to the member for Girrawheen's amendments. The minister said in rejecting them that they were ambiguous. I am absolutely certain that is the word by which the minister described these amendments. Therefore, I ask the minister where exactly they are ambiguous and what ambiguity can be found in these two amendments, which to my mind and the minds of everyone on this side of the house are absolutely clear. They attempt to avoid some injustice that may otherwise occur in the legislation. If the minister's reasoning is that they are somehow ambiguous, and, therefore, he rejects them, I would very much like to hear exactly where he believes them to be ambiguous.

**Mr R.F. JOHNSON:** I repeat what I said earlier. I much prefer dealing with the member for Girrawheen, who is the shadow Minister for Police and the shadow Minister for Road Safety. I give some credence to her comments and her ability because of the way she deals with issues. What I did say to her —

**Mr P. Papalia:** You said there were ambiguous and so you were not going to accept them.

**Mr R.F. JOHNSON:** What I am not prepared to do is accept the amendments tonight, because I have some concerns about whether they will work. Let me just address the issue of small business. We have heard a lot of hyperbole about small business and how much the opposition cares about small business, and how we do not. Let me tell those opposite that I care about small business. Just as in the unlicensed driver legislation, the owner of a small business gets the vehicle back; in fact, out of about 300-odd applications for the release of a vehicle, I think about half have been approved in the past few months, both under the unlicensed driver and the hoon legislation. The hardship provision does come into play. If people own one or two taxis and it would affect them in a very deleterious way to lose that vehicle, they may well have a case of hardship to put to the commissioner. I would say they would have had a reasonable chance of getting the vehicle back, but they would have to prove that it would be a hardship.

The main purpose of all of this legislation—the unlicensed driver legislation, the hoon legislation, and the drink-driving legislation, which I will be bringing on later this year—is not to get those people off the roads because they are unlicensed or because we do not like them because they are hooning, it is to try to reduce the death toll and the number of people who are critically injured on our roads every year. Believe it or not, I think some of this is having an effect at the moment—I do not want to claim any glory because I am not claiming any glory—because what we have seen so far, compared with the corresponding period for last year, is a reduction in the number of deaths. As far as I am concerned, that is the main purpose of this type of hard legislation. We want to get unlicensed drivers, drink drivers, and those people who hoon around all over the place and cause a nuisance to the community off our roads. Members know that everybody who owns a vehicle has a responsibility to try to do their utmost to ensure that if they give their vehicle to somebody else to drive they have a bit of responsibility in this as well.

I have said to the member for Girrawheen that I will give these amendments further consideration, because she may well have some valid points. But I am not prepared to accept the amendments tonight because that would be creating more legislation on the run. That is why I have included in this legislation the ability to make

Mr Rob Johnson; Mr Mark McGowan; Ms Margaret Quirk; Acting Speaker; Mr John Quigley; Mr Tom Stephens; Mr Andrew Waddell; Mr John Kobelke; Mr Bill Johnston; Mr Paul Papalia; Deputy Speaker; Speaker

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regulations. If, between the time it leaves this house and goes to the other place, I am convinced, on advice, that there is something in what the member for Girrawheen has suggested, then I give her an assurance that I will look into it. I am not hard and fast, as the former government and the previous Minister for Police were; they would never, ever accept amendments. I am telling the member that I will not accept it tonight, but in the short course of time I will look at it.

**Ms M.M. Quirk:** Minister, would you like to sleep on it, and we'll come back and finish it off in the morning?

**Mr R.F. JOHNSON:** No, I am not going to sleep on it; this needs to go through this house and be transmitted to the other house. I will not sleep on it. I have thought long and hard about what I have put before the house tonight. The member for Girrawheen has presented possible scenarios that we have not even considered. I do not know whether these have happened in the past six years or not, but I would like to find out about the specific cases the member is talking about.

**Ms M.M. Quirk:** By way of interjection: these are not lotto numbers, minister, there is a very real prospect that either of these scenarios could occur.

**Mr R.F. JOHNSON:** I cannot say whether they will or will not. I do not know whether the scenario, as the member calls it, has actually happened in the past six years. I am not aware of a Lamborghini, a Ferrari or a Mini Cooper situation happening in the past six years; we just seem to have had three in the course of three months. We never saw that happen six years ago. The member never saw it; I never saw it.

It is my intention to get this bill to the upper house. I will look more closely at the member's suggestions. I am not saying I will agree to them, but I will give the member a commitment that I will look more closely at them and take advice about them. If I believe there is merit in any of the member's amendments, then I will deal with them. I think that is pretty fair. That offer was never made to me when I was in opposition.

**Mr M. McGOWAN:** I do not intend to delay the house for much longer, but I will set out, for opposition backbenchers, the incontrovertible justice of the amendments that we have moved today. People often say, "I will look at what you've said and I will take advice and examine it", and it is often the case that that does not happen. In all fields and areas of human activity that is often the case. I predict that if these amendments, or amendments of this type, are not put into this legislation, we will be back in this house with further examples of injustices of this type in the future. There will be another bill and another set of embarrassments at the end of this year or next year, whereby people who run small businesses, people who run a taxi service, ordinary folk in our community, have been caught and an injustice has been committed against them and there is no capacity for the authorities to release the vehicle, and that person suffers as a consequence.

**Mr R.F. Johnson:** That is the purpose of the regulation ability.

**Mr M. McGOWAN:** We will, therefore, have to come back with further legislation.

**Mr R.F. Johnson:** Regulations.

**Mr M. McGOWAN:** That is my prediction to this house. I would suggest that the minister act upon what he said earlier. This is a very sensible amendment and we will still support it in this house; however, my suggestion to the minister is that he acts upon what he said to us.

**Mr J.R. QUIGLEY:** I rise to support what the member for Rockingham said—that the propositions contained in this amendment are to address the prospect of incontrovertible injustice and that the people who are likely to suffer this injustice are small business people. Therefore, by voting against this amendment tonight, the government will send a clear message to small business people that it is not here to protect them when they are the hapless innocent. The amendments themselves are not complex or difficult to comprehend. The minister has at his table not one, not two, but three advisers —

**Ms M.M. Quirk:** They are all very capable.

**Mr J.R. QUIGLEY:** They are all very capable advisers who are in this place to advise him on a relatively small amendment to clause 10. The very learned Attorney General is also in the chamber and is available to the minister. The minister says that he is not sure whether this amendment could work and he does not understand it. I can accept that the minister cannot understand it; however, that is not the point. The test is, as I am sure the Attorney General would agree, not whether the minister has the capacity to understand this amendment, but whether it would effectively protect small business. Therefore, when the division is called, those people who move to this side of the chamber to vote against the amendment will be slapping small business proprietors in the face by leaving them exposed to the actions of employees beyond their control, when they have taken every reasonable step to ensure that the law is obeyed. I commend this amendment to the chamber.

Mr Rob Johnson; Mr Mark McGowan; Ms Margaret Quirk; Acting Speaker; Mr John Quigley; Mr Tom Stephens; Mr Andrew Waddell; Mr John Kobelke; Mr Bill Johnston; Mr Paul Papalia; Deputy Speaker; Speaker

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**Mr W.J. JOHNSTON:** I draw the chamber's attention to an issue that the minister raised earlier—that is, leasing of taxis. The minister said that the lease of a taxi is the same as the lease of another vehicle. That is not actually true. The practice in Western Australia is for owners of taxis to “lease” a taxi to a driver for 12 hours, or however long, for a shift so that they do not have to have the driver as an employee. It is a long-established method of ensuring that a driver who does not own the cab is not considered an employee but rather the operator of the vehicle. It is a particular device that is used in this state and we are almost alone in this; for example, it is not practised in Sydney or Melbourne where other practices are used. The idea that somehow or other the lease of a taxi is analogous to a financing lease is incorrect. Having run not-for-profit organisations, I know that the member for Maylands and I are very familiar with that because we had operating leases and financing leases on vehicles that were used at our not-for-profit organisations. It is not analogous to that because the organisation or individual who leases the vehicle is effectively the owner, but in the case of taxi leases, they are effectively the owner only for the 12 hours or whatever of their shift. The vehicles will never actually fall to the ownership of the driver but always remain in the ownership of the taxi plate owner. Taxi leases are simply used as a device to prevent the operation of the Industrial Relations Act. Although the minister previously asserted in the debate that it was not reasonable to separate taxi leases from other leases, I think that if he stopped and thought about what occurs in the taxi industry, he would realise his comments were erroneous. If he thinks about it more deeply, he will realise the reason that the member for Girrawheen came up with this very well thought through amendment is that those drivers are really only employees; however, to avoid any employer liabilities, they lease the vehicle for the period of their shift, and the term “lease” used in the taxi industry is not what people would normally think. When the member for Bateman or the member for Nedlands lease their BMWs from Auto Classic, it is not the same type of lease as a taxi lease.

Amendment put and a division taken with the following result —

Ayes (21)

Ms L.L. Baker  
Mr J.J.M. Bowler  
Ms A.S. Carles  
Ms J.M. Freeman  
Mr J.N. Hyde  
Mr W.J. Johnston

Mr J.C. Kobelke  
Mr F.M. Logan  
Mr M. McGowan  
Mrs C.A. Martin  
Mr M.P. Murray  
Mr P. Papalia

Mr J.R. Quigley  
Ms M.M. Quirk  
Mrs M.H. Roberts  
Mr T.G. Stephens  
Mr C.J. Tallentire  
Mr P.C. Tinley

Mr A.J. Waddell  
Mr M.P. Whitely  
Mr D.A. Templeman (*Teller*)

Noes (25)

Mr P. Abetz  
Mr F.A. Alban  
Mr C.J. Barnett  
Mr I.C. Blayney  
Mr I.M. Britza  
Mr T.R. Buswell  
Mr G.M. Castrilli

Dr E. Constable  
Mr M.J. Cowper  
Mr J.M. Francis  
Dr K.D. Hames  
Mrs L.M. Harvey  
Mr A.P. Jacob  
Dr G.G. Jacobs

Mr R.F. Johnson  
Mr A. Krsticevic  
Mr W.R. Marmion  
Mr P.T. Miles  
Ms A.R. Mitchell  
Dr M.D. Nahan  
Mr C.C. Porter

Mr D.T. Redman  
Mr M.W. Sutherland  
Mr T.K. Waldron  
Mr J.E. McGrath (*Teller*)

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Pairs

Mr B.S. Wyatt  
Mr R.H. Cook  
Mr P.B. Watson

Mr V.A. Catania  
Mr B.J. Grylls  
Mr A.J. Simpson

**Amendment thus negatived.**

**New Clause —**

**Ms M.M. QUIRK:** I move —

Page 13, after line 22 — To insert —

**11. Section 79EA inserted**

After section 79D insert:

**79EA. Release of impounded vehicles on grounds of manifest unfairness or injustice**

- (1) Where a senior police officer has determined under section 79D that exceptional hardship will not be suffered in a particular case; or
- (2) Where circumstances outlined in section 79D(d)–(fb) do not apply;

**Extract from Hansard**

[ASSEMBLY - Wednesday, 17 March 2010]

p822a-856a

Mr Rob Johnson; Mr Mark McGowan; Ms Margaret Quirk; Acting Speaker; Mr John Quigley; Mr Tom Stephens; Mr Andrew Waddell; Mr John Kobelke; Mr Bill Johnston; Mr Paul Papalia; Deputy Speaker; Speaker

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- (3) A person responsible for an impounded vehicle may apply directly to the Commissioner on the grounds that the failure to release the vehicle would be manifestly unjust or unfair.
- (4) The Commissioner may require a person seeking release of an impounded vehicle under this section to provide information to him in the form of a statutory declaration.
- (5) The Commissioner shall release the vehicle the subject to an application under this section if he is satisfied that failure to release the vehicle would be manifestly unjust or unfair.
- (6) A decision made under subsection (5) must be made by the Commissioner or by a person acting in the role of Commissioner, and cannot be otherwise delegated to any other person.
- (7) Regulations may prescribe the method by which an application must be made under this section.

This is an absolutely key amendment that the opposition has moved. We have moved this amendment because members on both sides of the house have conceded that other circumstances and scenarios will arise with this legislation that we have not fully contemplated. The government has said that it will deal with this matter by including a provision that will enable further amendments to be made to this legislation by way of regulation. However, the reality is that it will be very difficult to draft regulations that will be able to deal with a new situation or scenario and that will be able to be used to authorise the release of an individual's vehicle within 28 days. It will be nigh on impossible to do that within 28 days.

This new section that we have proposed will cover only a very small number of cases. The argument has been put to me very forcefully by the minister's advisers that if this proposed new section is enacted, we will be opening the floodgates, and the Commissioner of Police will be flooded with paper and will not have time to do anything else. That is simply not true. The only people who will be eligible to apply under this proposed new section will be people who have already made application under the exceptional hardship provisions, or who contend that they fall under one of the other categories of exemption, which this legislation is about broadening out. This proposed new section is for those cases that fall through the cracks. If, as we have said throughout this evening, the government is really concerned about cracking down on hoons, the converse side of the coin is that the government should be equally concerned about not dragging innocent third parties into this widening net and causing them hardship and needless expense. This is about the very hard cases—the ones that do not come up every day. We have all been contemplating appropriate scenarios for an exemption. There are a few that we can think of, but not many. There will be only a very small number of cases that have not been contemplated and have not been provided for in this legislation. There will be only a very small number of cases in which there will be grounds to claim manifest injustice or unfairness. This is about doing the right thing. It is about ensuring that this legislation is not over-reaching and does not put people in a situation in which they will be without their vehicle through no fault of their own.

**Mr R.F. JOHNSON:** Let me say at the outset that I do not agree at all with this amendment. This amendment will open the floodgates. The member is talking about something outside of any application that people can make at the moment. My car might be impounded because I have committed an impounding offence. But I might think that it is manifestly unfair that my vehicle should be taken.

**Ms M.M. Quirk:** You cannot go straight to the commissioner, minister. Do you understand that?

**Mr R.F. JOHNSON:** I understand that. I would try the usual channels, but if I found that I could not get a positive response there, I would go to the commissioner.

**Ms M.M. Quirk:** But a subset of those would be successful, initially. If you have a smaller number than that, other people —

**Mr R.F. JOHNSON:** Under the member's proposed new clause, only the Commissioner of Police can make that decision if he believes that it is "manifestly unfair". That is a very broad term to use and it would be very difficult to police. I do not want the Commissioner of Police to waste his time doing that. I want him to do his job, which is to catch criminals. I believe that this new clause would open the floodgates. Earlier, the member for Girrawheen said that the police manifestly agreed with her amendments. I have got to tell the member that the police disagree completely with what the member is saying about this new clause.

Mr Rob Johnson; Mr Mark McGowan; Ms Margaret Quirk; Acting Speaker; Mr John Quigley; Mr Tom Stephens; Mr Andrew Waddell; Mr John Kobelke; Mr Bill Johnston; Mr Paul Papalia; Deputy Speaker; Speaker

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**Ms M.M. Quirk:** I know that they do, but I don't think you understand the process that is set out in this proposed new clause.

**Mr R.F. JOHNSON:** I do understand.

**Ms M.M. Quirk:** You are inferring that people can go straight to the commissioner.

**Mr R.F. JOHNSON:** No, I am not.

**Ms M.M. Quirk:** What do you understand is the process in this proposed new clause?

**Mr R.F. JOHNSON:** The advice I have been given is that the member for Girrawheen thinks it would be a review by the commissioner. Is that right?

**Ms M.M. Quirk:** He can look at it de novo. He is not restricted to what has happened before.

**Mr R.F. JOHNSON:** He would be inundated with applications to do that. I do not believe that is either good legislation or good work for the commissioner to do. I have said that I will look at the other amendments but I am very unhappy with this one because what someone thinks is manifestly unfair or unjust is a matter of conjecture and opinion. I do not want the commissioner to have to deal with what I believe would be an inordinate number of applications.

**Ms M.M. Quirk:** Police officers use their discretion every day of the week. Why is the commissioner any different?

**Mr R.F. JOHNSON:** The number of impounded vehicles is enormous. The member can argue her point as much as she likes, but I do not believe that it is a good point and it does not enhance the legislation. I have said that I would look at the other amendments, but I absolutely disagree with this one.

**Mr J.C. KOBELKE:** I support the amendment moved by the member for Girrawheen, and she has provided an excellent argument in favour of it. I ask the Minister for Police to stop and think for a moment because he has expressed to the house that he does not like it. He has not provided an argument that carries any weight; he simply does not like it. He must give more thought to what is proposed in this new clause and the particular problem that it seeks to address. The problem it seeks to address is that in some cases, we will be unable to foretell exactly what will arise and some people will be seen to be treated unfairly and unjustly. That will potentially undermine what should be good legislation. It is very important to have a safety release mechanism to deal with those issues. The minister has said that his ability to use the regulation-making power contained in the bill will address that. There are several problems with that. Firstly, the minister is not likely to make regulations until a problem occurs. He will wait until an injustice is committed and then he will consider doing something about it. He might wait until a second or a third case arises before he believes that it is necessary to put in place regulations to deal with it. The amendment moved by the member for Girrawheen provides a mechanism that can handle any problem that arises that would otherwise be seen to be an act of injustice if there were not a let-out to release a vehicle instead of impounding it. The first part of the minister's argument, which is just to use regulations, does not meet the same requirements as this amendment. Secondly, the minister has suggested that this would be a huge workload for the Commissioner of Police. That is simply not true. If the minister took the trouble to read the steps involved, he would see that a senior police officer must firstly check that he is not able to release the vehicle under the existing section.

**Mr R.F. Johnson:** Or where circumstances outlined in 79BD do not apply.

**Mr J.C. KOBELKE:** That is what I am saying: There is a filtering process with respect to 79D "exceptional hardship" and then proposed new paragraph (d) through to (fb). There is that filtering by a senior officer, and then this amendment requires only the commissioner or someone acting as the commissioner who can sign the release of the vehicle. It does not say that the commissioner cannot put in place officers to deal with the paperwork. All that will be required by the wording in this amendment is that if the case meets the criteria that the commissioner wants to judge by, then he or she has to sign off. It does not mean that the commissioner has to be on the front counter of the police station. There is no such requirement.

**Mr R.F. Johnson:** Do you want the commissioner to be a rubber stamp?

**Mr J.C. KOBELKE:** No.

**Mr R.F. Johnson:** That is what you are suggesting.

**Mr J.C. KOBELKE:** I am not saying that at all, minister. I am asking the minister to listen to what is being proposed and not to close his mind because he does not like it. That is all the minister is telling this house: I do not like it! The minister is not putting arguments as to why it would not work and deliver real benefit. I am

Mr Rob Johnson; Mr Mark McGowan; Ms Margaret Quirk; Acting Speaker; Mr John Quigley; Mr Tom Stephens; Mr Andrew Waddell; Mr John Kobelke; Mr Bill Johnston; Mr Paul Papalia; Deputy Speaker; Speaker

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taking the arguments the minister has given so far and saying that they do not stand up. The minister's earlier argument was that it would be too great a workload for the Commissioner of Police. However, if the minister reads the provisions here, administratively the commissioner has to sign off on the release of the vehicle, and it might be once every six months or once every year that a case would be such that the commissioner would agree. But the safety valve is there and we would not have to go through the situation of having a public outcry when the commissioner has been embarrassed on talkback radio because he cannot handle the case. The commissioner would have the opportunity to handle the case in a way that was fair and just. The commissioner has to sign off but the provisions do not require that the commissioner must look at every bit of paper on every appeal. It is only if it meets the provisions that the commissioner thinks it should be judged by, that it can come onto the commissioner's desk and he can reject it or approve it. No one else can approve it. However, it does not have to come through to him because he delegates a lot of that stuff already.

**Mr R.F. Johnson:** He cannot.

**Mr J.C. KOBELKE:** Of course he can. There is nothing that says the commissioner has to reject every application. It says he is the one who has to approve the release.

**Mr J.R. QUIGLEY:** I was following this very intently. I wonder if I could hear a little more from the member for Balcatta with his very lucid argument

**Mr J.C. KOBELKE:** I am only on the second of the three arguments that the minister has put. The minister's argument was that this amendment does not meet the need for which this provides. This is a much more efficient way of doing it. The minister's argument that the commissioner would have to handle the administrative work and be bogged down is simply not true. There is no basis for that at all. Proposed new section 79EA(5) of the amendment is that the commissioner shall release the vehicle the subject of an application under this section if he is satisfied that failure to release the vehicle would be manifestly unjust or unfair. The next subclause says that only the commissioner or a person acting in the role of commissioner can do that. The commissioner is approving the positive act of releasing; it does not say that the commissioner cannot delegate the approval procedures for something that comes onto his desk. He does that in myriad areas already. The commissioner sets the guidelines for officers and if it jumps these hurdles they can put it on his desk and then he might accept it and release the car or reject it. The commissioner does that every day of the week. It does not require the commissioner to be bogged down in huge amounts of paperwork. The third argument the minister was using is the idea that "manifestly unjust or unfair" is perhaps difficult to know and where will be the transparency of the judgements that will be made? The public will know that because these difficult cases will be in the public arena. We already have prosecution policy guidelines. All police officers and independent constables have the ability to make decisions of judgement. All police officers from the lowest constable up to the commissioner are required to do that on a fairly regular basis. The fact that the minister is asking what will be the precedent for manifestly unjust or unfair is putting obstacles in the way of accepting an amendment that will work and that will let the minister off the hook of embarrassment when cases arise that he has not thought of, and gives the minister a way of managing them. I ask the minister to put aside his open prejudice to something. The member for Girrawheen has worked this up and has come up with a very good idea, and I ask the minister to think positively about this amendment or some variation of it—if he thinks there are technical issues with it. It will provide a safety valve that will mean our anti-hoon laws will be respected and seen to be working, and will not be regarded as laws that impinge in an unjust and unfair way on a very small minority, therefore potentially undermining the good work they do in impounding hundreds, if not thousands, of vehicles.

However, on the other side there are a small number of really hard cases that the minister has not thought of that we could manage in a way that would not bring the minister and this law into disrepute in the public mind. The minister needs to think again about how good these amendments are that the member for Girrawheen has moved and, hopefully, he will see that they are actually improvements to the legislation and the bill before the house.

**Mr R.F. JOHNSON:** I actually think the hoon laws are working. The previous Labor government's hoon laws are working. There has been the very odd case where they have not worked. The Labor government did not think of them six years ago and I did not think of them six years ago; I accept that, but the hoon laws are working. That is contrary to what the member for Balcatta is saying now. We are getting a lot of hoons off the roads, and that is the whole purpose —

**Mr J.C. Kobelke:** I didn't say you weren't. I am saying don't undermine it with only a small number of injustices.

**Mr R.F. JOHNSON:** No. Let me tell the member that the problem with the proposed amendment is that a decision made under proposed section 79EA(5) must be made by the commissioner or the person acting in the role of the commissioner. If the commissioner is not there to make the decision, it would be made by the deputy commissioner who would be acting commissioner.

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**Ms M.M. Quirk:** That's the final tick off.

**Mr R.F. JOHNSON:** A final tick off? So the member would not expect the commissioner to do his job under this proposed amendment and make a decision? To make a decision one has to actually study something.

**Ms M.M. Quirk:** Yes.

**Mr R.F. JOHNSON:** The member's proposed amendment states —

- (1) Where a senior police officer has determined under section 79D that exceptional hardship will not be suffered in a particular case; or
- (2) Where circumstances outlined in section 79D(d)–(fb) do not apply;

That is, amendments that we have brought forward today. Those circumstances would apply in a very small number of cases; the member for Girrawheen knows that and I know that. The opposition's amendment would open the floodgates to any case outside of those cases. If someone were to lodge an application under this amendment on the grounds of manifest unfairness or injustice, the government and the police believe there would be thousands of applications. Everybody would chance their arm and lodge an application for their vehicle. The commissioner would have to look at all of those applications because they would fall outside the ones —

**Ms M.M. Quirk:** You didn't listen to him.

**Mr R.F. JOHNSON:** I did listen to him.

**Ms M.M. Quirk:** You didn't understand what he was saying.

**Mr R.F. JOHNSON:** I did understand what he was saying, but I think he was —

**Mr J.C. Kobelke:** Where does it say that the commissioner must look at every application?

**Mr R.F. JOHNSON:** It says quite clearly under the proposed amendment —

- (6) A decision made under subsection (5) must be made by the Commissioner ...

It must be made by the commissioner.

**Mr J.C. Kobelke:** That is only for the decision to release, not the decision to reject.

**Mr R.F. JOHNSON:** It is any decision. That is what the proposed clause says.

**Mr J.C. Kobelke:** Only if he forms that opinion. It doesn't say that he has to look at every application.

**Mr R.F. JOHNSON:** He has to make a decision. Whether it is a positive one or a negative one, he has to make a decision. Members opposite want to tie up the Commissioner of Police doing that.

**Mr J.C. Kobelke:** There are other areas in which the commissioner is the sole decision maker but he still delegates the paperwork to other officers and makes the decision at the end of the process.

**Mr R.F. JOHNSON:** So the member wants to make the commissioner a rubber stamp? He does not want the commissioner to stop and think: let me look at the case here and the submission. The member just wants him to rely on somebody else to say, "I don't think you should approve this one, commissioner, so just put a tick and put your rubber stamp on it." That is what would happen under the opposition's amendment. I am sorry but I do not agree with the amendment and for that reason I reject it.

**Mr J.R. QUIGLEY:** There are a few things I want to address on this amendment. As I said at the outset, it really opens up the fault line between the Liberal government and the Labor opposition. Labor was in government and is in opposition unquestionably determined to see hoon taken off our roads. It was a Labor government that introduced the hoon laws in the first place. We remain as a party and as a group of people deeply committed to taking hoon off the roads, as are all Liberal members. We all know from doorknocking in our electorate offices that it is one of the most frequent and serious complaints that we come in contact with. It is only the Labor Party that is vigilant to protect the innocent in exceptional circumstances. As I said in the analogy I drew before about killing noxious weeds, the Liberal Party's approach is to throw a blanket over the weed and kill half the lawn; it knows it has the weed in there somewhere, and it does not matter about collateral damage, whereas in Western Australia's history, the Labor Party has always been the party that is prepared to walk the extra few yards through difficult traffic to look after the rights of the individual. When the minister says that this concept of manifest injustice or unfairness is all too airy-fairy, I am absolutely sure that the member for Girrawheen, who is legally trained and a very experienced lawyer, had turned her mind to the Criminal Code and the provisions dealing with criminal appeals, in which the whole concept of justice in Western Australia turns upon the concept of manifestly unjust or unfair. That is what the Court of Appeal does all the time when

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assessing whether the judge who struck the initial sentence came up with the right sentence, and overturns it only if it is manifestly unjust and unfair. I am sure that the member for Girrawheen, who has read myriad legal judgements, had that in her mind indisputably when drawing the amendment in this way. I am equally sure that the member for Hillarys has never read a legal judgement or the Criminal Code, and that is why he says that this is an airy-fairy concept that he has never heard of. It is discussed in the highest courts of this state on a daily basis. There is a reference point to it. The new concept is one of exceptional hardship. If members google all the cases in Western Australia and look for the definition of “exceptional hardship”, it will take them back to the hoon legislation, because this is a concept introduced in the hoon legislation. Therefore, to criticise the member for Girrawheen’s amendment on her choice of a well-understood, well-known phrase of manifest injustice is a nonsense. We can go to any case and the judges talk about that all the time.

The Attorney General has graced us with his presence by returning to the chamber, and I am sure he has returned to confirm with the honourable Minister for Police that that concept is a well-known concept at law. That is the first point.

**Mr C.C. Porter:** I think the concept is manifestly excessive or manifestly inadequate.

**Mr J.R. QUIGLEY:** Or manifestly unjust.

**Mr C.C. Porter:** Do you say that is grounds for appeal?

**Mr J.R. QUIGLEY:** It can be, yes. I have had it in appeals against sentence; absolutely.

**Mr C.C. Porter:** No; in appeals against sentence, it is manifestly excessive or manifestly inadequate. You know that. You’re wrong.

**Mr J.R. QUIGLEY:** The next part of this argument that we move to is that this would burden the police commissioner. My time will expire soon and the Attorney can help us in the chamber, if that is what he has come back for. The next part of this whole concept is that it will overburden the commissioner with work, because he is more than a rubber stamp and he will have to turn his mind to these things on the recommendation of his officers.

**Mr P. PAPALIA:** I am finding this incredibly insightful, and I would like to hear more.

**Mr J.R. QUIGLEY:** We know that under all sorts of legislation the commissioner signs off on things. For example, under the listening devices act, the commissioner signs off on the listening device warrant. I am sure that he does not pore over all the paperwork of the organised crime squad to say, “Have you got the reasonable grounds to believe that evidence may be gleaned from the positioning of a listening device in the member for Hillarys’ house, for example, or wherever?” He goes on the recommendation coming from the squad; and if the organised crime squad can come up with a paragraph or two of recommendations, invariably the commissioner will run with them. The buck has to stop with someone. Someone has to accept ultimate responsibility. On a ground of manifest injustice, we would not want sergeants or newly made-up inspectors making this call because this could open up too many exceptions.

**Ms M.M. Quirk:** The exception rather than the rule.

**Mr J.R. QUIGLEY:** It has to be the exception; exactly, member for Girrawheen. We have got to keep it tight and not have too many going through. For example, it would be inconceivable that a person caught hooning who was the owner of the vehicle could say, “It is manifestly unjust that my vehicle has been impounded when I committed this offence.” That is the whole purpose of the legislation. A person would have to go further than saying, “It’s unfair and unjust on me; it’s my vehicle.” This allows a modicum of discretion to vest in the Commissioner of Police to deal with those exceptional cases that we collectively have not yet thought of. We have thought of the service repairer and we have thought of the automotive sales yard. Although the minister has not, we have thought of the small businessmen who the minister abandoned tonight. We thought of the taxi owner and sought to protect him but the minister abandoned him this evening. There will be other categories of third parties where we will say, “Why didn’t we think of that?” There will be cases where it does not fit within anything we have thought of so far and it will not involve—and it is unimaginable that it will involve—an owner of a vehicle who hoons, because what is unfair or unjust about taking his or her car? That is the purpose of the legislation. It will be one of those “other circumstances” involving third parties that are not yet covered —

**Mr R.F. Johnson:** Does the member know what percentage of vehicle impoundments involve a third party vehicle?

**Mr J.R. QUIGLEY:** Small.

**Mr R.F. Johnson:** Fifty per cent.

**Mr J.R. QUIGLEY:** Fifty per cent are third party vehicles?

**Extract from Hansard**  
[ASSEMBLY - Wednesday, 17 March 2010]  
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Mr Rob Johnson; Mr Mark McGowan; Ms Margaret Quirk; Acting Speaker; Mr John Quigley; Mr Tom Stephens; Mr Andrew Waddell; Mr John Kobelke; Mr Bill Johnston; Mr Paul Papalia; Deputy Speaker; Speaker

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**Mr R.F. Johnson:** Yes. That is what I am informed.

**Mr J.R. QUIGLEY:** How many are impounded a week?

**Mr R.F. Johnson:** I think the estimate is about 10 000 a year.

**Mr J.R. QUIGLEY:** We are talking about 100 a week. Of those 100 a week, we have to weed out the service providers, the car yards and, hopefully, the employers' vehicles; the taxis. We are coming down to well under 100 vehicles. The minister is saying that this is too big a burden on the Commissioner of Police and his staff to deal with.

**Mr P. PAPALIA:** Mr Speaker, it is getting really interesting. I would like the member for Mindarie to continue.

**The SPEAKER:** Member for Mindarie, I will give you an opportunity to continue. I appreciate the member's interest in consideration in detail. You have had 10 minutes on your feet. I ask you to be absolutely relevant to the amendment moved by the member for Girrawheen.

**Mr J.R. QUIGLEY:** What was I not being?

**The SPEAKER:** I would ask you to be absolutely relevant.

**Mr J.R. QUIGLEY:** Thank you for your helpful guidance, Mr Speaker. I am indebted.

This amendment opens up the fault line between the government and the Labor opposition, which would have, as in mandatory sentencing, always at the bottom under any system the capacity of the system to deal with the odd case that presents as exceptionally unfair or unjust, because if the system cannot cope with those exceptional cases where unfairness or unjustness might be thrown up, then we have an unfair and an unjust system. That starts to bring the system into disrepute. It starts to undo the work of community policing, because it starts to introduce the concept of them and us, which is something I will speak on in this chamber on another occasion. That is why I commend this amendment to the chamber.

*Question to be Put*

**Mr J.E. McGRATH:** I move —

That the question be now put.

Question put and a division taken with the following result —

Ayes (25)

Mr P. Abetz	Dr E. Constable	Mr R.F. Johnson	Mr D.T. Redman
Mr F.A. Alban	Mr M.J. Cowper	Mr A. Krsticevic	Mr M.W. Sutherland
Mr C.J. Barnett	Mr J.M. Francis	Mr W.R. Marmion	Mr T.K. Waldron
Mr I.C. Blayney	Dr K.D. Hames	Mr P.T. Miles	Mr J.E. McGrath ( <i>Teller</i> )
Mr J.J.M. Bowler	Mrs L.M. Harvey	Ms A.R. Mitchell	
Mr I.M. Britza	Mr A.P. Jacob	Dr M.D. Nahan	
Mr G.M. Castrilli	Dr G.G. Jacobs	Mr C.C. Porter	

Noes (20)

Ms L.L. Baker	Mr J.C. Kobelke	Mr P. Papalia	Mr C.J. Tallentire
Ms A.S. Carles	Mr F.M. Logan	Mr J.R. Quigley	Mr P.C. Tinley
Ms J.M. Freeman	Mr M. McGowan	Ms M.M. Quirk	Mr A.J. Waddell
Mr J.N. Hyde	Mrs C.A. Martin	Mrs M.H. Roberts	Mr M.P. Whitely
Mr W.J. Johnston	Mr M.P. Murray	Mr T.G. Stephens	Mr D.A. Templeman ( <i>Teller</i> )

Pairs

Mr V.A. Catania	Mr B.S. Wyatt
Mr B.J. Grylls	Mr R.H. Cook
Mr A.J. Simpson	Mr P.B. Watson

Question thus passed.

*Consideration in Detail Resumed*

New clause put and a division taken with the following result —

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Mr Rob Johnson; Mr Mark McGowan; Ms Margaret Quirk; Acting Speaker; Mr John Quigley; Mr Tom Stephens; Mr Andrew Waddell; Mr John Kobelke; Mr Bill Johnston; Mr Paul Papalia; Deputy Speaker; Speaker

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Ayes (20)

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Ms A.S. Carles  
Ms J.M. Freeman  
Mr J.N. Hyde  
Mr W.J. Johnston

Mr J.C. Kobelke  
Mr F.M. Logan  
Mr M. McGowan  
Mrs C.A. Martin  
Mr M.P. Murray

Mr P. Papalia  
Mr J.R. Quigley  
Ms M.M. Quirk  
Mrs M.H. Roberts  
Mr T.G. Stephens

Mr C.J. Tallentire  
Mr P.C. Tinley  
Mr A.J. Waddell  
Mr M.P. Whitely  
Mr D.A. Templeman (*Teller*)

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Mr G.M. Castrilli

Dr E. Constable  
Mr M.J. Cowper  
Mr J.M. Francis  
Dr K.D. Hames  
Mrs L.M. Harvey  
Mr A.P. Jacob  
Dr G.G. Jacobs

Mr R.F. Johnson  
Mr A. Krsticevic  
Mr W.R. Marmion  
Mr P.T. Miles  
Ms A.R. Mitchell  
Dr M.D. Nahan  
Mr C.C. Porter

Mr D.T. Redman  
Mr M.W. Sutherland  
Mr T.K. Waldron  
Mr J.E. McGrath (*Teller*)

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Pairs

Mr B.S. Wyatt  
Mr R.H. Cook  
Mr P.B. Watson

Mr V.A. Catania  
Mr B.J. Grylls  
Mr A.J. Simpson

**New clause thus negatived.**

**Clause 10 put and passed.**

**Clauses 11 and 12 put and passed.**

**Clause 13: Section 80I amended —**

**Ms M.M. QUIRK:** I made the observation in my contribution to the second reading debate today that there were some ambiguities in cases where a third party wants his vehicle released and whether the Commissioner of Police would be prepared to return it without getting the fees. If a third party paid the fees he could then recover the vehicle collection fees from the driver who committed the hoon offences. However, if that person is ultimately acquitted, can I get confirmation that, in fact, the innocent third party may effectively be lumbered with those costs? Ultimately, the only time those costs can be recovered is upon conviction, when the order is made by the court.

**Mr R.F. JOHNSON:** There was a bit of noise going on when the member made those comments, so my advisers could not hear them completely. However, I think I am right in saying that what the member said was: if moneys had been paid to release the vehicle and the person is acquitted or not found guilty of the offence, is that money refunded?

**Ms M.M. Quirk:** No, this is in relation to a third party, who was not the driver or the offender, who has paid the money to have the vehicle released. Ultimately, the third party will recover that money from the actual offender at the time of conviction, but I seek confirmation that if the offender is acquitted, the third party will have no way, as part of that prosecution process, to recover the costs he incurred in releasing his vehicle.

**Mr R.F. JOHNSON:** If the third party has paid and the offender is acquitted, the commissioner has to pay back the money to the third party.

**Ms M.M. Quirk:** Is there a statutory requirement that the commissioner pay it back?

**Mr R.F. JOHNSON:** As far as I am aware, that is already in the legislation. To answer the member's question: yes, the third party who paid the cost will have that money reimbursed by the commissioner if the offender is acquitted.

**The SPEAKER:** Members, there is considerable noise in the chamber at the moment. I am sure that Hansard is having some difficulties hearing and some members who are further back in the chamber may want to hear the question from the member and the answer from the minister.

**Ms M.M. QUIRK:** I am pushing the envelope a bit, but in the interests of speed further down the track I take this opportunity to thank the minister's advisers, Rebecca Neilson, Tara Whitney and Steve Oswald, for the assistance they gave in helping to interpret what is now a pretty difficult piece of legislation with an amendment on the amendment on the amendment. Therefore, I formally record their assistance.

**Clause put and passed.**

**Title put and passed.**

**Extract from *Hansard***

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