

ROAD TRAFFIC LEGISLATION AMENDMENT (DISQUALIFICATION BY NOTICE) BILL 2010

Committee

Resumed from 18 November. The Chairman of Committees (Hon Matt Benson-Lidholm) in the chair; Hon Simon O'Brien (Minister for Transport) in charge of the bill.

Clause 10: Section 67 amended —

Progress was reported after the clause had been partly considered.

Hon ALISON XAMON: Before the break in consideration of this bill, we were discussing the intent of clause 10. As a result of that discussion, I now move the amendment standing in my name on the supplementary notice paper —

Page 6, line 18 — To delete “the offender may be arrested without warrant.” and insert —

if the member of the Police Force reasonably suspects that the person has committed an offence against —

- (i) section 59(1)(a); or
- (ii) section 59A(1)(a); or
- (iii) section 63; or
- (iv) section 64; or
- (v) section 64AA; or
- (vi) section 64A; or
- (vii) section 64AAA; or
- (viii) section 64AB; or
- (ix) section 64AC,

the person may be arrested without warrant.

By way of explanation, as I suggested previously, clause 10 as it currently reads means people can be arrested merely for refusing to undertake a breath test, rather than because there is a reasonable suspicion that they have been drinking and are potentially over the limit and therefore driving while under the influence of alcohol. Clause 6, which has already been passed, is about people being arrested because there is a reasonable suspicion that they are drink-driving, and the test applied in such case is a breath test. However, with clause 10, people may refuse a breath test for a number of reasons. I suggest that there is a difference between clause 10 and clause 6; that is, that simply refusing to adhere to a breath test does not in itself mean that there is a reasonable suspicion that a person has been drinking and is therefore under the influence. Although I thought that it was still appropriate to allow arrest powers for people who potentially are drunk and have been driving, I suggest that it is not consistent to extend those powers of arrest to people who have merely refused a test when there is no reasonable suspicion that they have been drinking. Hence, I have proposed this amendment. Obviously, we will discuss it further from here.

Hon SIMON O'BRIEN: We did not have this amendment available to us when the Committee of the Whole last met, but it has been placed on the supplementary notice paper now. I respond to it in the following terms. It is my understanding that the effect that the mover wishes to achieve is that a person may not be arrested without warrant for offences in which that person has refused a breath, blood or urine test; that is, the person failed to provide a breath, blood or urine sample. I think it is the case that the honourable member's intentions—I think I have interpreted correctly what she wants to do—do not take adequate account of what we are trying to achieve with the regime already in the Road Traffic Act, by which people should not be able to escape the consequences of returning a positive sample simply by the device of refusing to give one. If, as Parliament has previously —

The CHAIRMAN: Members, since debate started on this clause, there has been significant discussion all around the chamber. I remind members that Hansard needs to be able to hear. I know that some members have indicated to me that they are finding it difficult to follow debate. Therefore, if you need to make contact with another member, please do so outside the chamber.

Hon SIMON O'BRIEN: The established principle in law is already contained in the Road Traffic Act, and in particular in section 67, which carries with it a presumption that a refusal to provide a sample is done because the person is trying to avoid providing evidence of an offence that the person suspects that may well have committed. For that reason, the penalty that applies when a person is found guilty of a section 67 offence is the same penalty that would apply if the person were found guilty of whichever of those offences that they the person is being tested for or is seeking to avoid. Section 67 has already been accepted in principle by Parliament;

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it already exists. The member is now seeking, as we extend this by applying a power of arrest—this has already been debated—that this power should not apply in the case of someone refusing to provide a sample. If that were to be the case, I know what the standard response might well be out there on the streets by someone who is stopped, who is asked by the police to provide a sample and who does not want to provide one—it will be to refuse. With this amendment, the effect will be that in many cases the person will get away with not providing the sample. If that is the case, that frustrates the intent of this clause. For that reason, the government is not inclined to support the amendment. I will grant the member that in many cases a police officer might be able to establish a reasonable suspicion before requiring someone to provide a sample, but that is not necessarily the case on all occasions. That question of whether or not the police officer has established a reasonable suspicion before requiring the test could be argued in a subsequent court case, which brings us right back to the genesis of this bill and the policy behind it; that is, we get on with justice as soon as an offence is found to have been committed, not to have more matters to be picked over and argued in subsequent court proceedings. With all of that in mind, the government declines to support the amendment.

Hon ALISON XAMON: I have many issues to respond to. The first thing is that if the intent had been simply to remove the powers of arrest on the refusal of a breath or blood test, the amendment would have recommended that the entire section be deleted. That is not what it does. The amendment still enables powers of arrest when there is a reasonable suspicion that people have committed certain acts. I wanted to clarify that because I think certainly —

Hon Simon O'Brien: I am well aware of it; I said it in my remarks.

Hon ALISON XAMON: I did not interrupt the minister, even though I felt he was misrepresenting the purpose of the amendment, so I would like the opportunity to speak.

Hon Simon O'Brien: I thought you were asking me to interject.

Hon ALISON XAMON: I am sure the minister and I would be in furious agreement that the last thing we would want to do is allow a provision whereby someone who has been drink-driving is able to get away with it, simply by refusing the test. That is why the nature of the amendment is to incorporate the element of reasonable suspicion in order to ensure that arrest can take place. One of the things I am concerned to do is to make sure there is consistency across legislation on powers of arrest. It is very important, when we are affording these powers, that we have a consistency across offences as they have been committed. Simply failing to undergo a test, when there is not even a reasonable suspicion that somebody has been engaged in wrongdoing, is not consistent with some of the other offences that would ordinarily be subject to arrest. One of the things that the Greens have been trying to achieve in this amendment is consistency across those powers. Finally, I will say that I do not share the minister's concerns about the nature of the courts. I think that principles such as a requirement for reasonable suspicion are sound and that is not something I am fearful of introducing into legislation. It does become a balancing act, and people are entitled to have their day in court, so to speak, if they feel they have been subject to inappropriate or excessive conduct.

I state again that the purpose of the amendment is not to enable people who are reasonably suspected of engaging in drink-driving to get away with it. I argue that under this amendment they are still able to be arrested, but it does mean, if there is no reason to suspect reasonably that that person has been drink-driving, that the police are not afforded a power of arrest. I point to the examples raised by Hon Ed Dermer in his speech last week during which he spoke of a constituent who, for personal reasons, was unable to submit to a test. It may be that there is good reason for that. If a police officer does not have any reason to think that that person has been drinking, the police officer should not therefore be afforded a power to arrest that person. It seems excessive.

Hon KATE DOUST: For the record, I indicate that on this occasion the opposition will not be supporting Hon Alison Xamon's amendment.

Amendment put and negatived.

Clause put and passed.

Clause 11: Sections 71C to 71H inserted —

Hon KATE DOUST: Just to trigger my memory, I recall that when we last sat there was discussion about deferring consideration of clause 11 until after we had completed all the other clauses. That may have changed because the minister may have had time to resolve those matters. I do not know whether the minister wishes to defer this clause.

Hon SIMON O'BRIEN: I thank the honourable member for what she has just noted. Of course, the house had to adjourn last Thursday without completing its consideration of this bill and before we got to clause 11. I understand there have been some other discussions and briefings to interested members and some of the queries

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have been satisfactorily resolved. I am in the committee's hands, but I propose that we now deal with clause 11, which is the key elements of the bill—unless anyone wishes me to defer it for some further discussion.

Hon MAX TRENORDEN: I was the guilty party, and this morning I had a significant briefing with the appropriate people. I am not sure whether the minister wants to relay his side of the briefing or he wants me to relay my side of the briefing. I do not think we can leave the questions of last week hanging, but I do not want to take up the time of the chamber.

Hon Simon O'Brien: I will have a go at summarising.

Hon MAX TRENORDEN: I am happy for the minister to do that and I inform the chamber that my concerns have been allayed, but I want the chamber to know what are the minister's responses to those concerns.

Hon SIMON O'BRIEN: In summary, last week Hon Max Trenorden raised an issue about a situation, which already arises from time to time, in which people have been found to have committed some offence that might trigger the proposed disqualification notice procedure and when that occurs in some remote corner of the state there is a question of how they get home safely and, if they have passengers in their car who are incapable of driving themselves, how they get home safely and so on. There was a general recognition that those questions arise already when people are picked up for certain offences or are intercepted by the police. It might be for something like an expired driver's licence or some such; it may not be an alcohol-related offence. The police deal with that by using the discretion and commonsense that Western Australia Police has traditionally exhibited. This is the assurance the member seeks, and this bill does not change that. This bill introduces some other tools at the police's disposal—disqualification notices and so on—but it does not in any way take away the discretion the police have to exercise in the real world. Specifically, we would be relying on police in the real-life situation of someone being detained in some remote place and perhaps not being allowed to drive on for the time being. Police currently address that situation, and they will in the future, just as they address a lot of other situations that require a bit of judgement on the ground as required—the sorts of things that both I and the member recognise cannot actually be legislated for. It would be a very poor thing if we used legislation to stop that discretion being exercised. I understand that the member has now received all the comfort that I and he need to make sure that this does not do away with police discretion.

Hon MAX TRENORDEN: My understanding is that, as the minister has outlined, a person will receive an infringement notice, and, after a raft of procedures that are not really worth going through now, the same discretion will apply as applies now, and the person may not receive notice of the two-month disqualification for a period of time. That totally allays my concerns. It was not that I wanted to let anyone get away from the legal processes of being caught drinking and driving, but I did not want people to be stranded, and I thought the discretion process may have been done away with. My concerns have been alleviated, and I support the Road Traffic Legislation Amendment (Disqualification by Notice) Bill 2010.

Hon ALISON XAMON: As I noted in my contribution to the second reading debate, the Greens (WA) do not support this provision, fundamentally because it removes the presumption of innocence. Although much in the Road Traffic Legislation Amendment (Disqualification by Notice) Bill 2010 is to be commended, unfortunately we feel that this provision is simply a bridge too far, which I will discuss further. As such, I intend to move —

Page 6, line 20 to page 11, line 21 — To oppose the clause.

For the Chair, I note that I have a number of subsequent amendments on the supplementary notice paper. If this amendment is not successful, I will not move the other amendments because they are consequent on this amendment.

The CHAIRMAN (Hon Matt Benson-Lidholm): I advise Hon Alison Xamon that she does not have to move that motion; she simply needs to vote against clause 11. That is the method of attack, if you like. Hon Alison Xamon has the call.

Hon ALISON XAMON: Thank you, Mr Chairman; it is good to have that clarified. If my amendment to clause 11 is not successful, my subsequent amendments will lapse and I will not move them because they are contingent on my amendment to clause 11 being passed.

I have a number of questions, but I wanted to reiterate that the Greens' primary concern about this clause is that the removal of a driver's licence can be quite serious, although it is appropriate in circumstances of people having chosen to drink and drive, for all the reasons we have discussed at length. I think that when people make the decision to drink and drive, they are choosing to put themselves and others at risk, which is unacceptable. It is a privilege, not an automatic right, to hold a driver's licence. But as I have stated before, even though we are talking about a relatively small number of people in the overall number who are routinely caught drink-driving, the price paid by people who are innocent of the offence without the opportunity to go to court to have the matter heard—the disqualification of the driver's licence—can be quite disastrous. Part of the concern is that, by the

time they go to court and are cleared of the charge, they have, effectively, already paid the price. People need their drivers' licences to manage their families, to go to work and for medical reasons, and to lose it can be more than simply an inconvenience. There are quite serious reasons why people need their licences. As I say, if they have been drinking and driving, they do deserve to lose it—there is no suggestion otherwise—but if they have not, the Greens believe it is unacceptable that they should pay the penalty for that with no recourse, even if they are subsequently found to be innocent of the offence.

Hon SIMON O'BRIEN: The matters that are being canvassed now have been canvassed at other times during the debate on the Road Traffic Legislation Amendment (Disqualification by Notice) Bill 2010. Indeed, clause 11 contains sundry proposed new sections and the bulk of this bill is contained in the single clause we are now considering. To oppose clause 11 is almost like having a bit of a rerun of the second reading debate. Nonetheless, the honourable member is quite right to address clause 11 in the way she has, and I think it is only appropriate that, even though we debated this a bit earlier in the proceedings, I give her the courtesy of a response. I respectfully point out that because many of the substantial active parts of the provisions of the bill are contained in this clause, there is more to it than simply the question of disqualification. For example, proposed section 71E contains contemplation of how a disqualification notice may, at any time, be revoked by a police officer in certain circumstances. That provides the capacity for the correction of an error of judgement or an error of process that may have occurred. Proposed section 71F contains a provision for a court to review a disqualification notice at an early date, so there are checks and balances in all of this.

Nonetheless, it comes down to a central point that was established, I believe, at the time of the second reading vote—that is, having weighed in the balance the risks that the honourable member has just summarised, this place has already decided to accept the fundamental premise of this bill, so much of which is contained in clause 11. We have already discussed, for example, that of the 11 500 charges laid in the past year, a very small number actually pleaded not guilty. Of those, I think a total of about 30 were dismissed.

Hon Alison Xamon: Thirty is what you said last time.

Hon SIMON O'BRIEN: That may have been for all sorts of reasons, other than the defence successfully proving the not guilty plea.

Hon Alison Xamon: Although it could have been because they were found not guilty.

Hon SIMON O'BRIEN: But the point is that that is a very small and almost infinitesimal quantity. The overwhelming body of evidence, gained through long experience, is that in the circumstances in which we are proposing that a disqualification notice regime will take place, we have found that the right decision is to proceed with a disqualification forthwith. The proposition agreed to by this house at the second reading stage—it also is the proposition of the government—is very much that it is a poor state of affairs that if someone is disqualified from driving, that disqualification does not commence forthwith. That is the very thing we are trying to correct. I hope I have now provided enough response, in good faith, to the member. Clause 11 is fundamental to what we are trying to do. We believe that the deterrent factor will be great. We believe that benefits will accrue that far outweigh any disincentives that the member has referred to. We think people will know what they are getting themselves into if they choose to commit an offence because there will be an education campaign, as the minister promised in another place. I urge the house to support the clause before us.

Hon ALISON XAMON: I realise there was a fair bit of discussion when we were at clause 1 of the bill. I remind the minister that when clause 1 was discussed the Greens did not participate in a big way. If the minister recalls, I stipulated I wanted to have further discussion on a clause-by-clause basis. I have not had the opportunity to speak at length about the concerns I have with clause 11, although I certainly accept that the opposition and Hon Max Trenorden spoke at length about their concerns with clause 1. Having said that, the minister is also correct in identifying that this is about a difference of opinion between weighing up removing the presumption of innocence against the desirability of making sure that people who drink and drive are caught and stopped from driving any further. I suppose nothing is ever black and white; it is always quite difficult to figure out what is the best balance. In this instance the Greens (WA) are of the view that the presumption of innocence is so fundamental within our system of law that it is simply too important to compromise; although I certainly accept that, given the seriousness of drink-driving, other people feel more comfortable waiving that principle to ensure that people do not continue to be a danger on our roads. I will, however, pick up on the minister's points about proposed section 71E. I may have to go back to a few others as well, but the minister particularly spoke to that. I note there is the power for the police force to revoke a disqualification notice, but I also note, as it has been prescribed, that it is only under certain circumstances; that is, effectively circumstances in which police have found an error in the equipment. The point about going to court on these matters is that evidence may be presented by the defendant to indicate that there has been some sort of equipment fault. I do not believe it is sufficient to simply allow the police the power to revoke, because the circumstances under which they can do that are fairly limited. I particularly note that the provision has no penalty if police do not actually proceed with

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the revocation of disqualification. Even though the words in proposed section 71E(1) are that they “must immediately revoke a disqualification notice”, what are the consequences for the police if they do not revoke that?

Hon SIMON O'BRIEN: The administration of any procedures under general orders by a police force has to be delivered in good faith. That would certainly be the intention and the reality with this provision, as it is with others. I do not see how the question that the member contemplates would realistically arise. The whole idea of what is proposed is that a charge for an offence is simultaneous with a disqualification notice; so the two become inseparable. If, for some reason, the charge is withdrawn and not proceeded with, obviously the disqualification notice, as per this section, falls away. Vice versa, as we have already discussed, one of the effects of the power of arrest, which is a matter that has already been decided, is that someone would then be charged forthwith as well as receive a disqualification notice at the same time. The effect of having a charge laid means that it starts the court process—it gets the person and the case before the court sooner rather than later. The whole point of proposed section 71E is to provide a means of revocation of a disqualification notice under the new regime. That is its purpose—it is a legal mechanism to undo that which may be applied under proposed section 71C. That is why we have it. It is not intended to be some punitive kind of conduct whereby if a police officer fails in discharging some bit of it, a criminal offence is committed. It is actually a provision to enable a disqualification notice to be withdrawn. It even goes so far as to specify that a notice “will be revoked” if certain circumstances exist. These things can be reviewed. I imagine they would be reviewed by a competent court if there was a failure to invoke proposed section 71E when it should be; that is, when one of the automatic triggers occur and thereby the court would deal with it and it would become an offence for the person charged. It is not intended that this be a punitive provision. That is why it does not create an offence for police officers who fail to act accordingly.

Hon ALISON XAMON: On the issue of the court process, I understand that part of what the government maintains is that because the matter will ultimately go to court, a person will still have the opportunity to state his or her case. I suppose, when I am referring to proposed section 71G, the whole point of this is that if a person is subsequently acquitted or a charge is subsequently dismissed, the disqualification notice will be revoked, but by then it will be too late; there will be no other recourse for the person who has wrongly had his or her licence removed. That is my concern. Even if it is found under proposed section 71E that a member of the police force, under the very narrow terms by which they can actually initiate that revocation, should have initiated a revocation and did not initiate revocation, that will ultimately come out in court, but by then, on average we are looking at approximately four months until a person gets an opportunity to be heard in court and that person would have already lost his or her licence for two months. They would have also already paid the price of the offence even if they were subsequently found to not only have been wrongly charged but also have been even eligible to have had the disqualification revoked in the first instance.

We are still getting back to the issue of people paying a penalty without having been formally found guilty of anything. The frightening part of this from the Greens' perspective is that we believe it is simply too high a price to pay to remove the court's ability to determine guilt and to allow the police alone to make that decision without the presumption of innocence for those few people—I acknowledge it is just a few people—who will be subsequently found to have been wrongly charged. Can the minister comment on what reparations may be available to people who are found to be innocent when they finally go to court, even though they have already been penalised by losing their licences? A person may lose his job or suffer detrimentally in another way as a result of not being able to have his driver's licence.

Hon SIMON O'BRIEN: The honourable member's concern is understandable. However, the same question can be asked of any number of situations in which people find themselves subject to a trial and are ultimately found not guilty. People will pay a price by having their lives disrupted et cetera, but there are procedures in place to help mitigate against that. Procedures can be invoked by those who are seeking redress after they have been falsely imprisoned or whatever the situation might be. Mercifully, those situations are very rare and are dealt with on their merits. The member is quite right; the fact is that this bill does not contemplate that. She believes that is a deficiency but it is the government's view that it is not a deficiency and that it would be very hard to legislate for such a thing. The lack of an amendment on the supplementary notice paper perhaps underscores that fact. If there were an easy way of addressing that, we certainly would look at doing it, even if the provision was virtually never invoked. However, I do not believe there is a way to do it. The question of whether we are prepared to accept a certain presumption of guilt when an offence is detected applies here, just as it did in earlier parts of the bill. I understand what the member is saying, but in the absence of an amendment I do not see how we can remedy this. I do not have an amendment that would fit the bill, and we certainly will not attempt to create one. What avenue does that leave the honourable member and those of a similar mind? They can vote against the question before the chair, which covers the ambit of clause 11 and is the entirety of the disqualification notice regime that we are seeking to implement. The honourable member has made a point and it is now on the public record, but I do not believe I can do anything further to assist her.

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Hon ALISON XAMON: I have some questions about proposed section 71, particularly proposed sections 71F(2)(b) and 71F(5). Can the minister enunciate some examples of the exceptional circumstances that may be contemplated?

Hon SIMON O'BRIEN: I would not want to offer hypothetical examples because that could limit the scope of what might come in the future, and that is not my intention. The term "exceptional circumstances" is deliberately broad. In the spirit of the other observations the member has made, I think she will applaud that we are leaving that broad discretion to the courts. In anticipating the sorts of things that might be exceptional circumstances, they could, and would, be likely to include the hardship circumstances that we will debate later when we look at the changes to extraordinary licences that we are proposing—that is, severe hardship that was caused by a disqualification notice at some particular time, perhaps for using the extraordinary licence to access medical treatment for a child, for example. That is a specific example, but it could be all sorts of things. We will leave it up to the courts to determine those matters.

Hon ALISON XAMON: The minister is correct to suggest that I am keen to keep the parameters for discretion as broad as possible. My question certainly was not intended to narrow those parameters. I want to understand how proposed section 71F enables the court to have some discretion about whether to revoke a person's licence. I would like to know how soon people who have been subject to a disqualification and who challenge that and who may firmly believe they are one of the 30 people a year who have been unfairly targeted may be able to appear before a court to put their case when the police have not endeavoured to enforce the revocation. I would like some clarification that the revocation of the disqualification is not the same as the withdrawal of the charges. Can the minister confirm that someone who needs to go to court at a later date to have the charges heard may be subject to a penalty at a later date even if the disqualification is revoked?

Hon SIMON O'BRIEN: On the last matter, yes. A revocation is just that. It does not flow that a revocation is a determination that someone is not guilty of the pending charge.

Hon ALISON XAMON: If discretion is given to the possibility of revocation, the person may still have his licence withdrawn at a later date but he will have been found guilty, in which case the minister and I are in agreement that the person should have his licence removed at that point. Can the minister answer my question about the initial time frame? Ordinarily, people will want an opportunity to have a quick turnaround in the court and say, "I have evidence that an error has been made. The charges may not be dropped but I do not believe that I should be subject to losing my licence in the first instance." How long will the person be subject to the loss of his licence before he has the opportunity to be heard in court and to have the disqualification revoked?

Hon SIMON O'BRIEN: Yes, it is the case. As we can see in proposed section 71F(2)(c), a delay of at least 14 days is built into any application for revocation. That is the fact with courts; a person cannot turn up at the counter and have his matter dealt with. A delay of 14 days is "light speed" compared with a lot of court processes.

Hon Alison Xamon: Sometimes a person can, but very rarely.

Hon SIMON O'BRIEN: Not in this situation. The point is that a person is not applying to the court for a rapid determination of the charge; that is a separate proceeding altogether. A person may be able to pursue some early determination of that; I do not know. Proposed section 71F is about a determination of revocation of disqualification. It contemplates the same sort of situation that exists now whereby a person goes to a court for an extraordinary licence to deal with the disqualification that is in force. This process is much the same. The situation would be that a person has a disqualification in force and he goes to the court to seek some relief on the basis of extraordinary or exceptional circumstances. That is the difference. Proposed section 71F is not about an early determination of a person's guilt or otherwise; it is about whether a person will be relieved of his disqualification because the court recognises an exceptional circumstance.

Hon ALISON XAMON: I understand that it is not intended to bring forward the proceedings of the charges, and that is not my concern. I suggest that the process of revocation and disqualification due to hardship is different from the issue of extraordinary licence application, fundamentally because people making applications for extraordinary licences have already been found guilty of the offence, or offences, that caused those people to lose their licence in the first place. The difference is that a person who makes that application must prove to the court good reasons for being given a second, or perhaps even a third, chance, because that person has already been found guilty. However, the issue with the revocation of disqualification is that people are seeking remedy from a penalty in circumstances in which they have not yet had the opportunity to be found guilty, but there is a presumption of guilt. I argue it is thereby different from that other process.

Hon SIMON O'BRIEN: I see what the member is after. If she cannot have an undoing of the proposed course, she would like a reassurance that these matters can be dealt with reasonably quickly. The Victorian experience is that there are not many applicants for revocation and there has been a fairly quick turnaround, although I do not

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know the exact turnaround times. I note that 14 days' notice must be given to the Commissioner of Police and so on. The spirit of the provision for revocation is not that there should be any delay. The reason for providing for revocation of disqualification in this bill is to allow for circumstances in which there needs to be a reasonably quick response. Otherwise, as Hon Alison Xamon says, the term of licence suspension is over and done with before the court gets to deal with revoking it. I think the member can be reassured on that. Mr Chairman, that is about all I can do to address that point.

Hon ALISON XAMON: The minister has accurately identified that I would prefer to have the entire provision lost. However, if there is at least some sort of understanding that we need to allow people who feel that they have been aggrieved through this process the opportunity for very quick recourse through the court system, that takes some of the sting out of concerns that are raised.

I am still going through clause 11. I want to check that my other issues have been addressed. Fundamentally, the Greens are opposed to clause 11 because of the reversal of the presumption of innocence. I do not have anything specifically that I need to pursue further within the committee stage. On that note, I have nothing more to say.

Clause put and a division taken, the Chairman casting his vote with the ayes, with the following result —

Ayes (30)

Hon Liz Behjat	Hon Wendy Duncan	Hon Nigel Hallett	Hon Ljiljana Ravlich
Hon Matt Benson-Lidholm	Hon Phil Edman	Hon Alyssa Hayden	Hon Linda Savage
Hon Helen Bullock	Hon Sue Ellery	Hon Col Holt	Hon Sally Talbot
Hon Jim Chown	Hon Brian Ellis	Hon Robyn McSweeney	Hon Ken Travers
Hon Peter Collier	Hon Adele Farina	Hon Michael Mischin	Hon Max Trenorden
Hon Mia Davies	Hon Jon Ford	Hon Norman Moore	Hon Ken Baston (<i>Teller</i>)
Hon Ed Dermer	Hon Philip Gardiner	Hon Helen Morton	
Hon Kate Doust	Hon Nick Goiran	Hon Simon O'Brien	

Noes (2)

Hon Robin Chapple	Hon Alison Xamon (<i>Teller</i>)
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Pair

Hon Donna Faragher	Hon Giz Watson
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Clause thus passed

Clauses 12 to 17 put and passed.

Clause 18: Act amended —

Hon ALISON XAMON: Of course, now we are dealing with the issuing of extraordinary drivers' licences. I believe that in his response to the second reading debate the minister made reference to inconsistencies across the judiciary as to the issuing of extraordinary drivers' licences. I want to have some further discussion around this provision because I am very curious to know where that sense of inconsistency comes from. Certainly in my experience, people who are issued extraordinary drivers' licences have to go through quite a rigorous process, justifiably, as I suggested in discussion of a previous clause. By the time people appear to apply for an extraordinary driver's licence, they have already been found guilty of an offence or offences and have lost their licence as a result and therefore they should have to prove that they are worthy of being given an extraordinary driver's licence. However, my experience has been that extraordinary drivers' licences are generally not issued lightly and tend to be quite restrictive, as they should be, so I wonder whether the minister has anything other than anecdotal evidence to indicate that currently the regime for issuing extraordinary drivers' licences is far too lenient.

Hon SIMON O'BRIEN: I would like to make a couple of points. The first is that we have already agreed at the last vote in clauses 12 to 17 to the regime that is proposed for extraordinary drivers' licences. The clause currently before us, clause 18 in part 4 of the bill, is in fact about amending parts of the Road Traffic (Authorisation to Drive) Act 2008, which of course is a new act awaiting proclamation. Therefore, really, the question of extraordinary drivers' licences that the member has raised has been dealt with. That is the first point.

The second point that I raise I am not referring to you, Mr Chairman, as a point of order but it might be a matter on which you decide to rule fairly soon—namely, discussions about whether we need to tighten up on extraordinary drivers' licences or whether there is any evidence that we need to do that is a policy question that was decided at the second reading stage. That is the fact of the matter and it has been debated.

The third point I make is that the member ought to look at the will of the Committee of the Whole in terms of wanting to progress the Road Traffic Legislation Amendment (Disqualification by Notice) Bill. The vote on clause 11 was carried by 30 votes to two. I understand that the only time we have had a vote carried more

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overwhelmingly was the tragic day in the mid-1990s when Hon Bruce Donaldson spectacularly failed against the unanimity of all other members in his bid to do away with the afternoon tea break in this place. What that shows is that —

Hon Ken Travers: Who is trying to stop the progress of this bill at the moment? I am just confused!

Hon SIMON O'BRIEN: The member came in late and it is a long story so he should just work with us on this!

Therefore, with all of that in mind, Mr Chairman, I do not think we should entertain the discourse that we are now invited to entertain. The policy of the bill has been decided so those broad questions are not up for debate. Clause 18 does not relate to extraordinary driver's licence provisions; the previous clauses did. If members have already agreed to those clauses, we should not be revisiting them.

Hon ALISON XAMON: What a sad day it would be indeed if members in this place were not allowed to speak about their concerns unless they had vast numbers of people behind them. I think that would be a very problematic day for democracy indeed. I add that I am as elected to this place as the minister is; therefore, I will continue to raise concerns as I see fit, as I was elected to, by the constituents who chose to elect me. That is what I am doing. Therefore, I will continue to raise the concerns I have about provisions in this bill. I spoke about concerns about extraordinary drivers' licences in my second reading contribution. The minister is correct on that; I identified that I had concerns about extraordinary drivers' licences. I note, though, that the comments I referred to were made in response to my second reading contribution, so I have not had an opportunity to explore further what was suggested in the minister's reply to the second reading debate. Again, I note that at that point the minister made reference to inconsistencies about the way that extraordinary drivers' licences are issued across the judiciary. I was interested to explore that to understand further what that actually meant.

Point of Order

Hon SIMON O'BRIEN: Clearly, this is revisiting the second reading debate, which is not the stage that we are up to, and it most definitely has nothing to do with clause 18. Therefore, on a question of relevance, this is a fruitless discourse.

The CHAIRMAN: I note that in response to clause 1, obviously significant latitude is given in that respect. I suggest to the Hon Alison Xamon, however, that this is rather specific. When dealing with clause 18, one's comments need to be relevant to the clause at hand. I put to the member that when dealing with clause 1, the capacity for the house to indulge members seeking clarification in a broad sense was given. I remind the honourable member that in respect of clause 18, we are not dealing with policy issues at this stage—they were obviously dealt with at, in particular, the second reading stage of the bill. I ask her to perhaps confine her comments to the clause that we are dealing with—namely, clause 18.

Committee Resumed

Clause put and passed.

Clauses 19 to 23 put and passed.

Clause 24: Section 30 amended —

Hon ALISON XAMON: Mindful of the ruling that the Chairman has just given, it may be that the minister may not be prepared, or may not be able, to answer the question that I am about to put. But I want to ask about the removal of the degree of hardship as a provision for the granting of extraordinary drivers' licences. Why was it deemed that that was acceptable specifically for people who had been subject to drink-driving offences? Obviously, people can be subject to a whole range of offences that will lead to removing their drivers' licences. I argue that some of them could be equally serious, particularly excessive speed and the like. Therefore, when we are talking about disqualification under these circumstances, why is that provision being removed; or is it being removed for everyone from here on in? I want to know where the evidence is that the law currently is too lax.

Hon SIMON O'BRIEN: Clause 24 is part of part 4 of the bill, which, of course, intends to translate those amendments that we have already approved to the Road Traffic Act 1974 to the Road Traffic (Authorisation to Drive) Act 2008, as amended. That in itself gives the support necessary for us to approve clause 24, because, clearly, it would be an absurdity if, having changed the current law, we were not to then make sure that the new act to come in in due course did not have similar provisions. Therefore, in that sense, clause 24 should stand as printed, whether members like the fundamental hypothesis of this bill or not. That firstly deals directly with clause 24.

In relation to the question that the member raises, yes, I am quite happy to entertain it for a moment. It is already the case in the Road Traffic Act 1974 that a person may apply for an extraordinary licence in certain circumstances but not in others. In particular, people are often surprised to find that if their disqualification or suspension of licence has occurred through the accrual of demerit points, they are not eligible to apply for an

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extraordinary licence, whereas if they have had their licence suspended because of a drink-driving offence, they can. People often think that that is a bit peculiar. The rationale for it—this has been the case for many years and over successive governments, including amendments that I have seen pass through this place—is that with a demerit regime, there is a presumption that if a person has incurred suspension through the accrual of a sufficient number of demerit points, he or she has also demonstrated a pattern of offending behaviour; and, despite getting fines for speeding, or whatever it might be, along the way, that person has not repaired his or her behaviour and is continuing to offend. Therefore, why should that person be given an extraordinary licence? A recent change—I think Hon Ljiljanna Ravlich managed the bill through this place at the time —

Hon Ljiljanna Ravlich interjected.

Hon SIMON O'BRIEN: It got through, probably with Greens' support; I do not know.

Hon Ljiljanna Ravlich: No, I did it on my own.

Hon SIMON O'BRIEN: She is a legend, Mr Chairman; an absolute legend. There is no doubt about her.

I think that was for what has come to be known as the double-or-nothing clause, which is a colloquialism for a system whereby even when a person accrues 12 demerit points, that person can still have, if he or she elects to do so, another chance to avoid losing his or her licence for a period of time, and there are conditions attached to that. If the person reoffends, he or she has really established a pattern of repeat offending; and, having used up a number of chances, the view in the bill and in the act, as it currently stands, is that that person should not get the further chance of an extraordinary licence. That is the rationale for it. However, none of that, of course, is in the bill that is before us now. They are the current arrangements in the act.

Hon KEN TRAVERS: I have one very quick final question. This clause seeks to amend the authorisation to drive act. That is an act that was passed by this house almost two years ago, if my memory serves me correctly. In fact, I think one section has been proclaimed, and it is basically the insignificant section that allows for the proclamation of the rest of the sections. I was wondering whether the minister could advise the house of when he expects that the act that we are seeking to amend will be proclaimed.

Hon SIMON O'BRIEN: I have a feeling that we are going to debate this on another occasion, so I will leave my remarks about early elections and things for another occasion. As a house, we dealt with the other parts of that package—I remember we sat at least an extra week in the middle of 2008 to deal with a whole lot of bills. A couple of those were amended, so now we have to start all over again. Therefore, I want to get the approval to draft for those bills, because there will be some amendments, by the end of this year, if I can, with a view to getting the balance of the package, which was lost at dissolution of the Parliament, into the house next year. So I look forward to having the support of Hon Ken Travers to progress those bills.

Hon Ken Travers: So early next year —

Hon SIMON O'BRIEN: That is what I would like to do.

Hon KEN TRAVERS: — you'll bring in the other bills that will allow the proclamation once they are passed?

Hon SIMON O'BRIEN: Yes. There is no point proclaiming this bill, but it is our intention that it be fully implemented. That is why we are amending it now by this provision.

Clause put and passed.

Clauses 25 to 29 put and passed.

Title put and passed.

Report

Bill reported without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Simon O'Brien (Minister for Transport)**, and passed.