## ROAD TRAFFIC LEGISLATION AMENDMENT BILL (NO. 2) 2015

*Consideration in Detail*

**Clause 1 put and passed.**

**Clause 2: Commencement —**

**Mrs M.H. ROBERTS**: Clause 2 deals with the commencement of the bill. I note that allowance has been made in this bill for the commencement of different parts at different stages. I also note that allowance has been made for the commencement of the Road Traffic (Alcohol Interlocks) Act 2014. Apparently there are some overlapping amendments with this bill and that act. The explanatory note states that at the time of drafting the bill, parts 2 and 3 of that act had not commenced operation. Can the minister advise whether they have yet commenced operation; and, if not, when they will commence operation?

**Mrs L.M. HARVEY**: Part 2 has already commenced and part 3 will commence in October this year.

**Mrs M.H. ROBERTS**: What is the delay with the commencement of the 2014 act, which was brought before Parliament some three years ago? While the minister is also answering that, perhaps she could also refer us to those overlapping amendments and how they interact with this bill.

**Mrs L.M. HARVEY**: When the legislation was passing through Parliament, we had flagged that there would be a delay between the passage of the legislation and the implementation of the scheme. The delays are due to the requirement for us to commence an upgrade of the information technology system for transport. We have also had to ensure that we can deliver the scheme right across the length and breadth of the state. We have been scoping providers and getting all that ready so that we can implement the scheme across the state all at once. That is the delay to the alcohol interlock scheme. When the legislation was going through, I flagged that it would take some time to implement the scheme. Whether it is a delay, I would call it a time lag.

The variations in the assent date for clause 45 relates to section 12 of the Road Traffic (Alcohol Interlocks) Act 2014, which refers to alcohol interlock offenders with zero blood alcohol content. We need that legislation proclaimed to commence immediately after clause 44. The proposed amendment in clause 47(3) is consequential on section 8 of the Road Traffic (Alcohol Interlocks) Act. It is proposed to commence immediately after the rest of clause 47.

**Mrs M.H. ROBERTS**: The minister said that one of the principal reasons for the three-year delay was, and I quote, the "upgrade of the information technology system for transport". Can the minister advise whether that is the upgrade of a police system for the Department of Transport or an upgrade of the systems at transport? What exactly has been involved in this upgrade and what is the scale of the upgrade? What did it achieve? The minister may be able to indicate the scale of the upgrade by way of cost.

**Mrs L.M. HARVEY**: I am advised that the Department of Transport manages and owns the system. Information technology upgrades have had to occur to the transport system to allow the new class of licence with an alcohol interlock requirement on it. In addition, some minor IT upgrades to the police system are needed, but this has been caught up in a number of IT upgrades to the transport system. It is all coming together with a proposed implementation date of October.

**Mr R.F. JOHNSON**: Can the minister tell me whether any real analysis has been carried out on the alcohol interlock systems? We have been promised it for years now. I was promised it when I was minister and for the last four years the minister has been promising it. It goes back before even then; I know that. What is the latest analysis of the alcohol interlock system? How many lives are now assumed will be saved once that is in operation?

**Mrs L.M. HARVEY**: Our analysis is not linked to the number of lives that can be saved but to the recidivism rates of offenders in the scheme. In areas where the scheme is in place, there has been an average 64 per cent reduction in recidivism.

**Mr R.F. JOHNSON**: Does the minister intend to allow those drivers who kill people while driving under the influence of alcohol or drugs, or whatever other reason, to get back behind the wheel and use alcohol interlock systems? Is that the minister's policy now?

**Mrs L.M. HARVEY**: Depending on the circumstances, the court can impose a custodial sentence and then also a period of disqualification or licence cancellation on a person convicted of a serious drink-driving offence. Should that person reapply for a licence and be granted the ability to drive subsequent to a conviction for a serious drink-driving offence or recidivist drink-driving offence, the alcohol interlock condition will be a requirement of that licence being issued. Several processes are in train before a repeat and recidivist

drink-driver can reach the point at which they can apply for a licence that will then have an alcohol interlock device condition on it, should it be granted by the court or the authority at that time.

**Mr R.F. JOHNSON**: I understand the policy for recidivist drink-drivers and I think most Ministers for Road Safety have been supportive of that and it is supported throughout Australia, as far as I am aware, and the interlock system has been used overseas. My specific question is: will any of this legislation cover those errant drivers who have killed someone because they have been drink-driving or drug-driving or other reasons—I suggest mainly drink-driving, but also drug-driving—or is the government interested in only drink-drivers?

**Mrs L.M. HARVEY**: Alcohol interlocks are used only for recidivist drink-drivers because the device conducts a breath analysis to detect alcohol content in the driver's system. At this point the devices are not geared up to detect drugs; they apply only to drink-drivers. As I have said, the devices will be used only when a person who has been convicted of an offence and has had their licence cancelled then applies to the court to have a licence reissued in whatever circumstances. We have constructed the scheme such that the licence can be granted only with an alcohol interlock requirement so that the offender will only be able to drive a vehicle with an alcohol interlock device fitted to it. Should that person be driving any other vehicle, it will be subject to the same impoundment regime that currently exists for people driving illegally.

**Mr R.F. JOHNSON**: We are going to treat people differently; that is, we are going to treat people who are convicted of drink-driving differently from those who are convicted of driving under the influence of drugs. I would have thought that there was very little difference between the two. If one takes drugs and drives and if one drinks and drives, they are impaired to a degree that is unacceptable on our roads and they are a danger to other road users. Is the minister now stating as policy that the government will treat drivers under the influence of drugs completely differently and more leniently than drink-drivers because there would be nothing in place for those convicted repeat offenders of driving under the influence of drugs equal to those who are repeatedly found guilty of driving under the influence of alcohol?

**Mrs L.M. HARVEY**: If technology improves and there is the ability to fit an interlock device of some description that can disable a vehicle should a person provide a positive test for illegal drugs, we would certainly consider that. At the moment the only technology we have is the alcohol interlock device that takes a breath sample to detect alcohol. Importantly in this legislation, we also allow for a change in the way the disqualification periods work. One of the amendments in this legislation provides that the period of disqualification will commence upon a person's release from a custodial facility, whereas previously we have seen a person's period of disqualification or licence cancellation occur from the day that they go into prison, and they have no capacity to drive in any event. That regime will be changed to ensure that the period of disqualification or cancellation is consistent with community expectations and begins at the release from a custodial facility.

Yes, we do treat people differently. That is what legislation effectively does all the time. However, in the absence of technology that enables us to have an interlock device that detects drugs, we can only act in this space in which alcohol interlock devices are available in the market. We hope to see a 64 per cent reduction in recidivist drink-driving once this legislation commences in October.

**Mr R.F. JOHNSON**: Some analysis and research must have been done. How many people out there will have to use the alcohol interlock system, and is that number equal to the number of people who have been convicted of serious drink-driving and would apply for a licence again? In other words, how many people will be using the alcohol interlock devices?

**Mrs L.M. HARVEY**: Out of our testing regime, around 14 000 motorists will have a positive reading on the roadside after taking a breath test. Of those 14 000, between 4 000 and 6 000 people would be judged by the interlock legislation that was passed in 2014 to be repeat drink-drivers eligible for the interlock scheme.

**Mr R.F. JOHNSON**: What is the cost of those 4 000 to 6 000 alcohol interlock devices?

**Mrs L.M. HARVEY**: I cannot tell the member what the cost of those devices will be, but the scheme is structured in such a way that the drivers have to pay for the management of the interlock device. Should they disable the device, they need to pay for a technician to reset their vehicle so they can start it again. All the costs of the scheme will be borne by those repeat drink-drivers who are applying, once again, for the privilege of a driver's licence, which can only be granted if it includes an alcohol interlock device condition.

**Mr R.F. JOHNSON**: I hope this is the last question. Between 4 000 and 6 000 interlock devices will be used. They will have to be purchased initially by government, by police or by the Department of Transport. Who will hold the stock of these? What is the cost of each individual one?

**Mrs L.M. HARVEY**: I do not have that level of detail available at this point. There are companies out there that will hold the alcohol interlock devices. Upon applying for an alcohol interlock device, a person will have to have one of those fitted to their vehicle. The cost of the rental of the device and the maintenance of the device is borne by the driver who has it fitted to their vehicle. It costs about two beers a week. We think that is an acceptable cost for a repeat drink-driver to bear should they wish to be granted the privilege of a licence again.

**Ms M.M. QUIRK**: Just while we are on the repeat drink-driver strategy, the minister said when she introduced the interlock legislation that it was the first tranche of a range of strategies for repeat drink-drivers. What are the tranches other than the interlocks?

**Mrs L.M. HARVEY**: I will have to go back to what I said at the time. That was a couple of years ago. I will take that on notice and get back to the member. We have implemented a range of initiatives with respect to drink-driving. Part of this suite of amendments form part of those tranches of changes. We will get to that in further detail as we move through the bill.

**Ms M.M. QUIRK**: In response to that, I understand that a strategy was put to the minister relating to repeat drink-drivers. I am asking that question now so that when we get to the relevant clauses, I will have a better idea of their context. Other than interlocks, what is in that strategy?

**Mrs L.M. HARVEY**: We had the alcohol interlock scheme, the crash blood test proponent of this amending legislation, our expenditure from the road trauma trust account around additional roadside breath-testing and different methods of testing for alcohol in people's breath samples and also roadside drug testing. We have $4 million going towards education campaigns and marketing campaigns. There have been a range of initiatives. I am happy to package all that up for the member if she so chooses and advise what the government has been doing with respect to drink-drivers and drivers under the influence of drugs over the four years that I have been the minister.

**Ms M.M. QUIRK**: My specific question was about repeat drink-drivers. I understand all those things that she has introduced. I want to know what specific things have been targeted at that very core, small group of hardened drunkards basically who risk lives on our roads by continuing to drive while drunk. I understand that a whole strategy was put to the minister that involved more than just interlocks.

**Mrs L.M. HARVEY**: The main part of the strategy for repeat drink-drivers is the alcohol interlock scheme. Obviously factored into that scheme are counselling sessions for people who have tried to start their vehicle after a positive alcohol test. This alcohol interlock scheme allows us to know specifically who those individuals are and target them with a device that then tells us if they attempt to reoffend and drink-drive, at which point we can then provide them with the appropriate counselling to break their drinking and driving habit. That is the main part of the scheme. The counselling component is where we have seen the major success, with a 64 per cent reduction in recidivism.

**Mrs M.H. ROBERTS**: I am interested in a couple of the questions that the member for Hillarys put forward. When he asked how much all the devices would cost, the minister was not able to give us an answer. She then said that the cost would be borne by the individual utilising the device in any event. When the member asked the cost of that, the minister told us—this is a new one for the Western Australian Parliament—the cost in terms of how many beers it would cost. According to the minister, it is not a penalty, because it costs a person the same as a couple of beers.

**Ms M.M. Quirk**: Is that imported or local?

**Mrs M.H. ROBERTS**: It costs the same as a couple of beers a week. We do not know whether that is imported or local. We do not know whether it is a pint. Could the minister clarify what she based her cost of a beer on? Is it the cost of an average pint in Perth, which the internet tells me is $7.87? That is pretty steep compared with the cost in some other states, I am sure. Is that what we are talking about? Are we talking about roughly $15 a week? Are we talking about more or are we talking about less? Are they beers bought from a bottle shop or from a pub? It is a real cost. The minister might scoff at the cost of a couple of beers to someone, but the reality is that it is a cost. It will be a cost to some families, and the alternative is that they do not have a licence. I do not think that that it is an appropriate expression to tell us the cost in terms of how many beers the sum of money could buy.

The member for Hillarys asked the minister how many lives could be saved by implementing this scheme. Although I am sure there is analysis of that—I am sure that other states have done that analysis—I guess that the minister has chosen not to advise the house of that because we just have to times that figure by four and we will know how many lives could have been saved over the last four years if the minister had not been so tardy. In response to the member for Hillarys' question, the minister advised that about 14 000 drink-drivers are caught in Western Australia each year, and it is estimated that between 4 000 and 6 000 of those persons a year who it is

anticipated will be caught over the blood alcohol limit will be eligible for this scheme. The minister also advised that the real benefit of this scheme, which has been analysed and about which there is information, is that it reduces recidivism by about 64 per cent. Is the minister saying that based on her best guess about 4 000 to 6 000 people a year may use this interlock scheme? If I take the average of that figure and say that we anticipate 5 000 people a year will use this scheme and that will reduce the recidivism rate by 64 per cent, I calculate that is 3 200 out of that 5 000 people. Hopefully, with the introduction of this scheme, we will see at least 3 200 people who would have continued to drink-drive previously not drink-driving. I think a calculation can be made, especially since we know that drink-driving is one of the major killers on our roads in this state. Along with speeding, drug-driving and not wearing seatbelts and other restraints, it is a very significant factor. Can the minister clarify the real cost of the scheme, and can she give it in terms other than "a couple of beers"?

**Dr A.D. BUTI**: I would like to hear more from the member for Midland, please.

**Mrs M.H. ROBERTS**: On recidivism and the number of people who will be availing themselves of this potential opportunity, does the minister anticipate, based on roughly 5 000 people being eligible for the scheme and taking it up, that somewhere upwards of 3 000 repeat drink-drivers will not be out on the road each year as a result of this legislation?

**Mrs L.M. HARVEY**: These things are always quite difficult to predict. To go back, the actual cost of the program is $1 600 for each participant for six months. Should they be required to have the alcohol interlock device on for longer, it would be more than that. That works out to be about $8.50 to $9.00 a day, which is where the comment about currency for people who drink a lot came from—and that is why it was made.

**Mrs M.H. Roberts**: She said two beers a week. Now she is saying —

**The SPEAKER**: It does not matter. Just let the minister answer, please. You have had your chance.

**Mrs L.M. HARVEY**: To clarify my comments, I was not expecting to have such an involved discussion on the alcohol interlock device legislation that was passed in 2014, because there is only a small reference to that legislation, so I was going by memory. However, I am happy to clarify that the cost of the program is $1 600 for each individual to have the alcohol interlock device in place in their vehicle for six months. Of the 4 000 to 6 000 recidivist drink-drivers who would potentially fall into the scheme—they would only fall into the scheme if they apply to have their licence reissued and they fit the conditions—we should see 3 250 or so people either in the scheme, therefore not drinking and driving, or potentially exit the scheme and not repeat offending, which is the intention of the program.

**Mr R.F. JOHNSON**: I am very interested in these alcohol interlock devices, obviously. Going on from some of the member for Midland's questions, has the new Road Safety Commission, not the Road Safety Council, conducted any research in the last couple of years or so since it has been in operation or consulted with other states and other jurisdictions or internationally on the latest information on the success rate of alcohol interlock devices? Can the minister give us some information or research findings from those other jurisdictions?

**The SPEAKER**: Member for Hillarys, this is the commencement date of the bill. I have been very lenient with you and the member for Midland. I have asked you to stick to the commencement of the bill.

**Mr R.F. JOHNSON**: That is my last question.

**Mrs L.M. HARVEY**: The short answer is, yes, of course, research has been conducted, and that is the reason we are implementing the scheme. That is the reason we brought the legislation forward and why we made our legislation different from that in other states. We made the alcohol interlock condition a compulsory condition for a repeat drink-driver who is applying for their licence to be reissued. I can provide updated research through the Road Safety Commission, but the member would need to either write me a letter or put a question on notice.

**Mrs M.H. ROBERTS**: As the minister well knows, we have raised these questions at this commencement clause because this legislation is not able to commence in one lot—clauses 2(a), (b) and (c) list that different parts of the bill commence at different stages. For example, part 3 needs to be delayed in effect because the act that it amends, the Road Traffic Amendment (Alcohol Interlocks and Other Matters) Act 2014, has not commenced operation. That is why we are asking about the delay in that legislation. When we debated that bill in this chamber in, I think, 2013, we anticipated that it would commence relatively soon. I am aware that the minister said at the time that there would be some matters to be sorted out with the technology and so forth, but we imagined that that might take a year or so; we did not imagine that, three years later, we would not be able to proclaim parts of a new bill because the 2014 legislation had not yet commenced. On the matter of relevance, I think the minister should have expected questions on the implementation of the Road Traffic Amendment (Alcohol Interlocks and Other Matters) Bill 2014. It is because that legislation has not yet commenced that we

have to delay parts of this legislation. Based on the progress the minister has made and the pace at which she makes progress, I have little confidence that this legislation will proceed according to the timetable she has suggested.

With regard to my earlier questions and some further questions from the member for Hillarys, the member for Hillarys initially asked about recidivism and the minister attempted to clarify some matters for us. I am not exactly clear on what she means by some of the things she said, so I seek that clarity. I suggested to the minister that if there were 4 000 to 6 000—let us average it at 5 000—that would mean that 3 200 people, or 64 per cent of 5 000, would not continue to drink-drive. I do not know whether that would mean that the rest of them would continue to drink-drive or that they would just not avail themselves of the scheme, so I am not sure how the minister is gauging success. Does the 64 per cent represent 64 per cent of people signing up to the scheme? Is there a pool of 5 000 people—the minister has said 4 000 to 6 000, so I am saying 5 000—64 per cent of whom take up the scheme, or is it a pool of 5 000, perhaps most of whom take up the scheme, but of whom 46 per cent fail the interlock scheme? Perhaps the minister could clarify that. Are we talking about the number of people who opt for the scheme, or are we talking about the percentage of people who opt for the scheme who continue, over the six months, to not show any evidence of drink-driving?

**The SPEAKER**: Member for Midland, I also cannot see the relevance of how this is tied into this clause.

**Mrs M.H. Roberts**: Have you read the explanatory memorandum at clause 2?

**The SPEAKER**: I have not read the explanatory memorandum, but I am just going to repeat again that this is the commencement of the bill and it is not a wideranging debate. We have really gone off the track. I will let the minister answer, but I am sure you can find your answers elsewhere.

**Mrs L.M. HARVEY**: What we are aiming to achieve is what has been achieved in other jurisdictions, which is a reduction in drink-driving crashes by 33 per cent or better, and a reduction in drink-driving recidivism by 64 per cent or better.

**Clause put and passed.**

**Clause 3 put and passed.**

**Clause 4: Section 50 deleted —**

**Mrs M.H. ROBERTS**: Clause 4 deletes section 50 of the Road Traffic Act 1974. Section 50 of that act reads, in part —

> The holder of a learner's permit shall not drive a motor vehicle except in conformity with any conditions to which the permit is subject and unless accompanied by a driving instructor under whose instruction the permit authorises the holder to drive …

Reference is also made in section 50 to six penalty units. Within the explanatory memorandum there is also a reference to the Supreme Court finding in Jarvis v Angok [2009] WASC 342. The explanatory memorandum states, in part —

> … the holder of a learner's permit who drives whilst unaccompanied by an "instructor" must be charged with an offence against that section.

I understand that the minister is removing that provision. Can she explain to the chamber what the import of removing that will be, and why it has taken seven years to propose to delete that section when it was presumably pointed out to the government in 2009?

**Mrs L.M. HARVEY**: The effect of this amendment is to ensure that a learner driver driving without an appropriate instructor or authorised supervisor is charged with an offence under section 49, which is offensive unauthorised driving.

**Mrs M.H. ROBERTS**: I seek some further clarification. What happens at the moment, and what will happen after this bill becomes an act, to a person on a learner's permit who drives unaccompanied? What is current practice, and what will happen after this bill becomes law?

**Mrs L.M. HARVEY**: Because of Jarvis v Angok, a learner driver who is driving without authorisation or without appropriate supervision currently has to be charged by police under section 50, which provides for a penalty of six penalty units, or $300. This amending legislation allows for the learner driver to be charged under section 49 of the Road Traffic Act, which brings with it a period of disqualification and a first offence of six penalty units, and escalating penalties imposed for subsequent offences.

**Mrs M.H. ROBERTS**: Did the minister effectively just say that a learner driver who drives without an instructor currently will not lose their licence under the existing legislation, but will lose it after this legislation becomes law?

**Mrs L.M. HARVEY**: The court still has the ability to impose a monetary fine or a period of disqualification, in effect rendering the learner incapable of applying for a driver's licence or another learner's permit for a period of time. That is what section 49 allows for as a consequence of driving while unauthorised, as a learner.

**Mrs M.H. ROBERTS**: Can the minister advise the chamber of the current situation with section 50, which is proposed to be deleted? Is the minister saying that the court currently does not have the discretion to remove the licence of a learner driver who drives without an instructor?

**Mrs L.M. HARVEY**: That is correct. If they are charged under section 50, which is currently the only opportunity to charge, there is no opportunity for the court to order a period of suspension or disqualification from driving.

**Mr W.J. JOHNSTON**: I apologise; I have not read Jarvis v Angok. I assume that that person was acquitted by the Supreme Court because the prosecutor brought the charges in the manner described on page 4 of the explanatory memorandum, but the court held that it was an invalid prosecution and that it should in fact have been made under section 50, which the minister is seeking to delete. Is that correct?

**Mrs L.M. Harvey**: That is correct.

**Mr W.J. JOHNSTON**: I do not know whether I still have the same amount of time on the clock but there is then a question of how many prosecutions have been brought to the court by the Crown under the arrangements described on page 4 of the explanatory memorandum that would be overturned by the court if there was an appeal.

**Mrs L.M. HARVEY**: I am advised that currently only one of those cases of a learner driver driving while unsupervised had been challenged. I do not have the data on how many learner drivers were previously charged under section 49 of the Road Traffic Act. However, since that case in 2009, police have charged learner drivers only under section 50.

**Mr W.J. JOHNSTON**: Is the minister aware of the number of cases that have been brought to court by the prosecution authority under section 49 of the Road Traffic Act—or is it the Road Traffic (Administration) Act? The explanatory memorandum refers to section 49 of the RTA; is that the Road Traffic Act or the Road Traffic (Administration) Act?

**Mrs L.M. Harvey**: It is the Road Traffic Act.

**Mr W.J. JOHNSTON**: Section 49 of the Road Traffic Act is headed "Driving while unlicensed or disqualified". The explanatory memorandum goes through the arrangement; it is very convoluted as opposed to the original section 50. The explanatory memorandum states that the regulations effectively constitute an offence pursuant to regulation 50(2). The bottom of the next paragraph states —

> It was intended that a breach of the condition imposed by regulation 47(3)(a) be dealt with as an offence against the RTA section 49, that is, an offence of unauthorised driving.

I seek to improve my understanding. Under subsection of section 49 of the Road Traffic Act will the prosecution authority be prosecuting learner drivers for a breach of regulation 50(2)?

**Mrs L.M. HARVEY**: At the moment, until this legislation is enacted, they will be charged under section 50. After this legislation comes into effect, they will be charged under the various different provisions of section 49 of the Road Traffic Act.

**Mr W.J. Johnston**: Which provisions?

**Mrs L.M. HARVEY**: Section 49 covers unauthorised driving and a range of other things. Does the member want me to source that and tell him each individual part of section 49?

**Mr W.J. Johnston**: Yes; it must be a particular subsection of section 49. It would be great if the minister could tell me that. It must be a breach of a particular section.

**Mrs L.M. HARVEY**: Section 49 of the Road Traffic Act 1974, "Driving while unlicensed or disqualified", reads —

> (1) A person who —
>
> (a) drives a motor vehicle on a road while not authorised under the *Road Traffic (Authorisation to Drive) Act 2008* Part 2 to do so; or

(b) employs or permits another person to drive a motor vehicle as described in paragraph (a),

commits an offence.

Penalty:

(a) unless subsection (3) applies —

(i) for a first offence, 6 PU; —

Which are penalty units —

(ii) for a subsequent offence, 12 PU;

(b) if subsection (3)(d), —

Does the member want me to read through all of these?

**Mr W.J. Johnston**: No, that is fine.

**Mrs L.M. HARVEY**: I can read through it all.

**Mr W.J. Johnston**: No; that is sufficient.

**Mrs L.M. HARVEY**: Thank you.

**Mr W.J. JOHNSTON**: The section describing the Road Traffic (Authorisation to Drive) Act 2008 part 2 does not specify the regulations made under the act. Has that question been tested?

**Mrs L.M. HARVEY**: I am not sure what the member is referring to. He will need to be more specific. My advisers do not know what he is talking about either.

**Mr W.J. JOHNSTON**: Excellent; no worries. As I said to the minister, although all the clause does is delete a single section of the Road Traffic Act, the explanation in the explanatory memorandum runs to over two pages of notes. As I said previously, it is very convoluted and hard to understand. It continually refers to regulations that are made under an act. However, I then read the section of the act that is mentioned in the explanatory memorandum, which states —

> It was intended that a breach of the condition imposed by regulation 47(3)(a) be dealt with as an offence against the RTA section 49, that is, an offence of unauthorised driving.

When I look at the offence of unauthorised driving, it mentions part 2 of the Road Traffic (Authorisation to Drive) Act 2008. It does not specify an offence against the regulations that are made under the Road Traffic (Authorisation to Drive) Act 2008. The problem we are rectifying is that the parliamentary draftsmen have got this wrong in the past and prosecutions have failed because the Supreme Court has said that prosecution authorities have not properly brought this matter to the court. It is explained that in Jarvis v Angok [2009] WASC 342—a matter seven years old—the parliamentary draftsmen got the drafting wrong and the arrangement that the prosecuting authorities thought was provided was not provided. I ask simply, given that we are fixing this mistake, are we happy that the description of the offence at section 49(1)(a) includes an offence against the regulations that are not specified as part of the words in the act? Have we tested whether we will have to be back here to include the regulations in section 49(1)? Rather than stating the words that are here, it would then state "drives a motor vehicle on a road while not authorised under the Road Traffic (Authorisation to Drive) Act 2008 or regulations made under the act".

**Mrs L.M. HARVEY**: The referral to the regulations is because in part 2 of the Road Traffic (Authorisation to Drive) Act 2008, "Authorisation to drive", division 1, "Driver licensing", sets out a range of regulations for what is a valid licence. A breach of those regulations is dealt with by section 49 of the Road Traffic Act. We are bringing the holder of a learner's permit driving in an unauthorised fashion into the regime that would have them ordinarily be dealt with under section 49 of the Road Traffic Act, which deals with unauthorised driving when they do not have an instructor with them.

**Mrs M.H. ROBERTS**: I understand that under the Road Traffic Act 1974, section 50A is about driving using a foreign country's driver's licence. Does that section remain or will it be deleted?

**Mrs L.M. Harvey**: That remains.

**Clause put and passed.**

**Clause 5: Section 54 amended —**

**Mrs M.H. ROBERTS**: This clause amends section 54 of the Road Traffic Act, and creates various duties for drivers of vehicles involved in incidents in which another person is injured. It goes on to refer to the penalties, which include imprisonment for 20 years if the incident occasioned death and, in any event, the court convicting

the person must order that the person be disqualified from holding or obtaining a driver's licence for a period of not less than two years. I note the use of the word "must", so the court is compelled to disqualify the person from driving for a period of not less than two years, so that is effectively a minimum disqualification period. I will not read them out, but there are other penalties for incidents involving grievous bodily harm and so forth. What are the current penalties? How are these penalties determined? Did the government give consideration to a longer period of disqualification from holding a driver's licence?

**Mrs L.M. HARVEY**: The maximum penalties for these offences have not changed, but we have introduced a mandatory minimum penalty of two years' disqualification for a person who, having been involved in a traffic crash that causes death or serious injury, flees from the scene of that crash and fails to render assistance, or fails to provide assistance to the police. The maximums remain as they were, but this amendment imposes a mandatory minimum of two years' disqualification for a person who does that.

**Mrs M.H. ROBERTS**: I also asked how those penalties were determined. Why has the government chosen a period of two years, and not five, 10 or 20 years? Why are the minimum periods of loss of licence under proposed subsections (3)(a) and (3)(b) the same, even though the prison term is 20 years under proposed subsection (3)(a) and 14 years under proposed subsection (3)(b).

**Mrs L.M. HARVEY**: We decided to make the mandatory minimum penalty under this section consistent with the mandatory minimum period of disqualification for dangerous driving under section 59.

**Mrs M.H. ROBERTS**: The minister will be aware that a private member's bill was debated in this chamber last week and voted down by the government. Reference was made by the member for Hillarys to the death of Martin Roberts, who was killed by a drink-driver, and other people killed by drink-drivers were mentioned. I think the member for Hillarys very validly raised the question: Why should that person ever get their licence back at all? Why should they be allowed back on the road two years after they have been released from jail? Whether it is Martin Roberts or someone else, the fact is that the victim has lost their life; they do not even get to live, let alone drive. Children and family members do not get to sit around the Christmas table enjoying a meal with them, or other family occasions such as weddings. This has huge ramifications. Someone is killed, maybe through the act of drunk-driving, or maybe by someone who was driving while off their face on drugs. The perpetrator will serve some time in jail for that, but when they are released they will again be allowed to be in charge of what is effectively a lethal weapon—a vehicle is a lethal weapon.

There is some difficulty and cost in getting around without a vehicle in Western Australia, particularly in country regions. People in the metropolitan area can use public transport, though it may be inconvenient for some, and it is not readily available in some of the outer metropolitan areas, particularly after hours and at weekends. People can use taxis, get a lift with someone else, or ride a bike. There are a range of ways of getting about, though many of them will be very inconvenient and costly. The member for Hillarys raised a very good point; that is, why should a person ever be allowed to drive again when their irresponsibility has resulted in another person being killed, and all the implications of that? Under proposed section (3)(a) the prison term is 20 years, and a person must be disqualified from holding a driver's licence for not less than two years. Two years goes pretty quickly; it is not long to wait at all.

That is why I asked the question at the beginning: How did the government come up with two years? Why is two years appropriate? I know that the minister is saying that there is currently no mandatory minimum period of disqualification, so it is possible that at present someone might get no period of disqualification after killing someone on our roads. I would like to know what capacity the court currently has, other than imprisonment, to remove people's drivers' licences. What is the maximum period? To me, two years seems pretty light and arbitrary. Why did the government not go for 10 years, or life, and why is it the same whether the incident resulted in death or grievous bodily harm? Why should someone who causes the death of another person not suffer a penalty of the loss of a driver's licence for a period exceeding two years? The same question arises. I understand that the court is at liberty to impose a longer term of suspension, but why would this Parliament not decide to impose a mandatory term of licence suspension that well and truly exceeds two years for someone who has caused either death or very serious injury?

**Mrs L.M. HARVEY**: In response, as I have said previously, these mandatory minimum terms of suspension come in at 12 months for an offence involving grievous bodily harm, and two years for an incident involving the death of another person. That is consistent with section 59 of the Road Traffic Act. We did that to maintain some consistency. There is currently no maximum period of suspension. The court can impose whatever period of suspension it chooses. However, this amendment ensures that there is a mandatory minimum that is consistent with section 59 of the act.

**Mr R.F. JOHNSON**: In relation to the terms of suspension and the terms of imprisonment for people who drive recklessly or while drunk and kill somebody or cause grievous bodily harm, there is, as the minister will be aware, in the Road Traffic Act —

**Mrs L.M. Harvey**: We are talking about a person who leaves the scene of a crash that has led to the grievous bodily harm or death of another person. This is about a mandatory minimum penalty for somebody who leaves the scene of a traffic crash in which another person has been harmed or killed.

**Mr R.F. JOHNSON**: Thank you, minister, but as I read clause 5, which amends section 54, the minister wants to delete the penalty and insert proposed subsections (3)(a), (3)(b) and (3)(c), shown on page 3 of the bill before the chamber. Is that so?

**Mrs L.M. Harvey**: Can the member ask that question again?

**Mr R.F. JOHNSON**: I said that we are dealing with clause 5, "Section 54 amended". In section 54(3) the minister proposes to delete each penalty and insert the penalties that are outlined in subclause (1); is that correct?

**Mrs L.M. Harvey**: Yes.

**Mr R.F. JOHNSON:** That is a very simple question, I would have thought, quite frankly. I did not hear the argument or questions put by the member for Midland, but I am interested, obviously, in penalties and bans for drivers found guilty of drink and drug–driving, in particular, and for other aggravated circumstances. Notwithstanding that, the proposed penalty of imprisonment for contravening this section is —

> (a) 20 years, if the incident has occasioned death and, in any event, the court convicting the person must order that the person be disqualified from holding or obtaining a driver's licence for a period of not less than 2 years;

Quite frankly, two things bounce out of this bill at me, and the first is the penalty of 20 years' imprisonment. I think this penalty was introduced by Christian Porter when he was Attorney General. At the time, I believed it should have been a police bill, but the then Attorney General wanted to introduce it. The penalty sounded really tough at the time. We were going to have a maximum penalty of 20 years in jail for anybody convicted of driving in that manner. The minister and I both know that in the four, five and probably six years following the introduction of that maximum penalty of 20 years that nobody has received the maximum penalty. I do think that anybody has received even 10 years. The average period of imprisonment is something like three and a half to four years before the offender is let out on parole. The latest case of a drink-driver who killed someone was a woman who got two years' imprisonment and, with parole, was out in just over a year. Recently the courts gave her licence back to her, although that was changed on appeal. What is the point of specifying a penalty of imprisonment of 20 years if the courts are not going to impose that penalty? Why does the minister not change this amendment so that the penalty is a minimum mandatory term of imprisonment and a minimum mandatory ban on a person being able to obtain a driver's licence? The minister pooh-poohed my Road Traffic Legislation Amendment (Disqualification for Life) Bill 2016 last week, but that bill addressed this situation in particular. I am fully aware that under the Road Traffic (Authorisation to Drive) Regulations, after 10 years, a person who has lost their licence can apply to the court for an extraordinary licence or to have their licence returned. It does not even need to be an extraordinary licence. The whole point of what I suggested in my bill last week, and I will deal with it again later in this bill, is that if we legislate for a lifetime ban, the courts have a clear indication of what this Parliament wants to happen. The courts are supposed to adhere to legislation passed in this Parliament. They are not doing that in many ways. I can quote other examples of instances in which somebody has knifed a person or stamped on somebody's head, or they have committed robbery with violence and have stolen a car and that person is out on a suspended sentence. We need to send a clear message. Why does the minister not do that in this bill?

**Mrs L.M. HARVEY**: As I said previously, and the member made reference to legislation he introduced in this place, part of the reason the member's bill is flawed is because it does not appropriately amend section 54 of the Road Traffic Act to maintain consistency in penalties. That said, this clause introduces a mandatory minimum term of disqualification from driving for a person who is involved in a traffic crash that causes grievous bodily harm and a mandatory minimum term of disqualification from driving for 12 months; and, if there has been a fatality, a mandatory minimum term of disqualification for two years should they leave the scene of the accident. We have come up with those mandatory minimum penalties because they are consistent with penalties that currently sit within section 59 of the act.

**Mr R.F. JOHNSON:** I want to come back to this issue, because the minister keeps saying that section 54 would have needed to be amended for this chamber to pass my bill. My bill would have ensured that a person convicted of drink or drug–driving, or driving under other aggravated circumstances, such as avoiding police pursuit, and dangerous or reckless driving, or driving a stolen vehicle would have imposed a lifetime driving ban. If the

minister had agreed to that bill, she could have amended this section today to cover that. If the minister were serious about saving lives on our roads, she would have supported my bill and not put up the furphy that it was flawed. First of all the minister said the bill was seriously flawed and then last week she said it was fatally flawed. I have never heard such rubbish in all my life. The minister is supposed to be serious about road safety and saving people's lives. Why would the minister not amend this section and agree to a lifetime ban for those people who kill somebody? The minister put forward spurious reasons last week and since then against my bill, such as having a lifetime ban would mean offenders would not able to take their children to school. I ask the minister: what about the poor devil they killed? They do not get time to spend with their children, let alone take them to school, or to take their elderly parents to hospital appointments. These were some of the reasons that the minister put forward for voting against a bill that has universal support—other than the minister and, I am afraid, a lot of weak-willed members of the government backbench who did not think carefully about this and who took the minister's advice that my bill was fatally flawed. I ask the minister to tell us how it was fatally flawed, because the minister and I know that it was not fatally flawed.

*Point of Order*

**Mr J. NORBERGER**: We are not talking about the member's private bill here. I understand we are in consideration in detail of a completely different bill and I wonder which bill we should be discussing.

**The ACTING SPEAKER** (**Mr I.C. Blayney)**: I take your point, member for Joondalup, but I want to hear the finish of this question from the member for Hillarys.

*Debate Resumed*

**Mr R.F. JOHNSON**: Thank you, Mr Acting Speaker. That is the trouble when we have new members who have not been here long enough and they do not understand what happens in this place.

**The ACTING SPEAKER**: Member, just continue with your question, please.

**Mr R.F. JOHNSON**: After 24 years, I appreciate the position of the Chair, and anybody could tell the member for Joondalup that.

This clause could have been amended if the minister and the weak backbenchers who went along with the minister last week and voted like sheep against it had supported it. My bill would have saved lives and given justice to families who have lost a loved one. I have spoken to people since then, and they are absolutely devastated by this minister and those weak backbenchers who voted like sheep. I am sorry to include the member for Belmont in that as I have a lot of time for her—not so much for the member for Joondalup; I do not have any time for him.

**Mr J. Norberger**: I don't want your support or your friendship, my friend!

**Mr R.F. JOHNSON**: I am sure that is mutual, and we will be sparring in months to come. I do not have a problem with that.

The minister is talking about being tough, but she is not being tough. This is the weakest legislation I have seen on road safety for those people who drink and drive and use drugs and drive and then get their licence back in virtually no time at all.

**Dr A.D. BUTI**: I have a couple of questions on this clause. My first question may show that I do not understand this area of the law that well. This clause provides that someone convicted under this section will not be able to obtain a driver's licence for a period of not less than two years. Do those two years run after they are out of prison? I assume they do because they do not need it while they are in prison.

**Mrs L.M. HARVEY**: Clause 9 contains another amendment to the Road Traffic Act that will allow for the period of disqualification to commence on the day a person is released from a correctional facility.

**Dr A.D. BUTI**: The explanatory memorandum states that, unlike section 59, there is no mandatory minimum penalty, which is why this amendment is needed. Section 59 deals with a driver who kills someone or inflicts grievous bodily harm et cetera. This clause deals with penalties under section 54 for a driver who kills or inflicts grievous bodily harm on a victim but who does not then render assistance, which is surely a greater crime than that in section 59. It is terrible that a driver has killed someone or caused severe damage, but the penalty is the same as in section 54, which refers to the additional crime that they have not rendered assistance. Why is the minimum period the same in both cases when I think the offence under section 54 would be of greater seriousness than the offence under section 59?

**Mrs L.M. HARVEY**: There are two separate offences. There is the offence of fleeing the scene of a traffic crash in which somebody has been seriously injured or killed. This introduces a mandatory minimum period of disqualification for someone who commits these two particular offences. However, if the person fleeing the

scene is also the driver, they could then also be charged under section 59 with dangerous driving causing grievous bodily harm or dangerous driving causing death, and maximum penalties are available to the court for both offences under sections 54 and 59. Should a person leave the scene of a traffic crash and then subsequently also be charged with causing the crash and driving dangerously or recklessly, other penalties can apply.

**Dr A.D. BUTI**: Under section 54, a driver has killed someone and also has not rendered assistance and as a result they may receive 20 years' imprisonment, or 14 years for grievous bodily harm, plus a mandatory period of two years.

**Mrs L.M. HARVEY**: If someone is involved in a crash and they leave, they will be charged under section 54. But they could also be charged under section 59 if they are also the driver of the vehicle and they have caused grievous bodily harm or the death of a person.

**Dr A.D. BUTI**: That is why they would receive a 20-year or 14-year penalty. Someone would not get that only for fleeing the accident. They would receive a sentence of 20 or 14 years' imprisonment because they have killed someone, not for fleeing; am I right?

**Mrs L.M. HARVEY**: Basically, the maximum penalties for these offences still remain. This clause introduces a new mandatory minimum penalty of a period of licence disqualification for these offences. At present the court is not required to impose any period of disqualification for a driver who is involved in a crash and causes the death or serious injury of another person and then flees. There is no mandatory period of licence disqualification. This legislation introduces that, notwithstanding that the court can impose a longer period of disqualification should it choose.

**Dr A.D. BUTI**: Page 5 of the explanatory memorandum states —

> The penalties were recently amended to reflect the penalties that apply for an offence against section 59.

That is if someone kills someone or causes grievous bodily harm, the sentence is 20 years or 14 years et cetera. The explanatory memorandum then states —

> However, while the penalty for an offence against section 54(1) or (2) does provide a discretion for a court to disqualify a person's drivers licence, …

It does not include a mandatory sentence. That is what we have now. Therefore, I assume that the difference for sections 54 and 59 is purely that we now have a mandatory penalty of two years' disqualification; is that correct?

**Mrs L.M. Harvey**: That is correct.

**Mr R.F. JOHNSON**: I have been having a good look at this clause and indeed the rest of this bill. The minister declared my bill as fatally flawed. There are nine pages of amendments to this bill that is before the house—nine pages. I have never seen so many amendments to a bill before the house. Surely if the bill were to be any good, these would have been put into the main body of the bill and the minister would not have relied on moving these amendments to a bill that I think is fatally flawed. It must be fatally flawed, because the minister has to amend it with nine pages of amendments on the notice paper. That is disgraceful. We are supposed to understand exactly what is going to happen here and how the bill will come out the other end as a perfect bill. We need a perfect bill to come out of this house because we are dealing with people's lives. Recently we have seen more people killed on our roads than we have seen for a long time and for many, many years. We need a bill that will deal with that. We do not have a bill such as that at the moment. We might have when these nine pages of amendments have been moved, and any other amendments that might come along. Last week the minister did not want to move amendments to section 54 of the act and make another bill perfectly good, but she wants us to accept that the nine pages of amendments that she has put forward in this house on this bill will make it a really good bill. I do not think it will. I want the minister to explain why she has been so shoddy and not had the bill made properly before bringing it to this house so that now we have to rely on amendments.

**The ACTING SPEAKER (Mr I.C. Blayney)**: I want questions that relate to the clause in front of us. We are working our way towards the minister's amendments to the bill. There is no point in me doing anything other than taking questions that relate to the clause that is in front of us. Does the minister want to comment?

**Mrs L.M. HARVEY**: The member has somewhat argued himself out of further amendments because he is saying that the amendments on the notice paper are unacceptable, yet he thinks that we should add further to them by moving amendments in line with his proposed legislation. We chose not to do that for a variety of reasons that were well canvassed in this place last week.

**Mr R.F. Johnson**: You were the only speaker.

**Mrs L.M. HARVEY**: I was quiet while the member was speaking; I expect the same courtesy. The amendments on the notice paper are administrative changes in language. The Parliamentary Counsel's Office and the legislative services section in transport have seen the opportunity to make some amendments to change and bring

some consistency to the language in the bill. The rest of those amendments allow us to implement the state's first point-to-point road camera trial. That is what those amendments are, just to be clear and to clarify that for you, Mr Acting Speaker, and the house.

**Clause put and passed.**

**Clause 6: Section 56 amended —**

**Mrs M.H. ROBERTS**: This clause amends section 56 of the Road Traffic Act so that in addition to reporting an incident to the officer in charge of a police station, the Commissioner of Police may approve other means of complying with these requirements. How will they be determined? Where will those means be published? I note that the explanatory memorandum states, for example, that it is proposed to provide that such a report may be made via the Insurance Commission of WA's online crash reporting facility. Again, I ask whether that is a shared database. How does that work in practice, minister?

**Mrs L.M. HARVEY**: In effect, this allows a person to report through the online crash reporting facility rather than in person to a police station. That is the effect of this amendment.

**Mrs M.H. ROBERTS**: The minister just restated my question. I pointed out that that is what the clause allows to occur. I want to know what will happen in practice. Are we giving carte blanche to the Commissioner of Police to determine at any particular moment in time who or where to report this to or is a particular regime in place? If the minister proposes to make reporting available through the Insurance Commission of WA's online crash reporting facility, will the minister as part of that or at any time in the future contemplate removing the ability of someone to report a crash or incident at a police station? Will it then be done exclusively online? I also want to know who has access to this information at the Insurance Commission. Is that information shared by police and the Insurance Commission or is it just held by the Insurance Commission? Is it just forwarded to the police? What happens in practice? These matters are really important.

**Mrs L.M. HARVEY**: This provision allows for drivers to report and then for the information in those reports to be made available. That information would only be made available subject to the information-sharing provisions of the Road Traffic (Administration) Act, which covers the appropriateness of sharing and releasing such information to other parties or the individual.

**Mrs M.H. Roberts**: What section of the act is that?

**Mrs L.M. HARVEY**: It relates to section 12, section 13A, section 13B, section 13C and section 13D. There is a range.

**Mrs M.H. ROBERTS**: This is my third go at this part of the question. Is it contemplated that police will no longer write traffic crash reports in the future? Just as people are now renewing their gun licences at post offices, will all this work be auctioned out to the Insurance Commission?

**Mrs L.M. HARVEY**: No. Someone will still have the opportunity to report to a police station in person if it suits them or through the online crash reporting facility. We are providing an additional opportunity for people to report these crashes, not taking away an opportunity.

**Mrs M.H. ROBERTS**: Just so that we can lock this down, I am not really asking about the government's policy or what the minister is going to do, because any government and any minister can change their mind and do something in the future. I want to know whether people will continue to have a legislated right to report an incident at a police station if they so choose.

**Mrs L.M. HARVEY**: I draw the member's attention to the clause before us. If she reads through clause 6(1), she will see that it provides for the reporting to occur, and there is an opportunity to report to, as set out on line 21 —

(a) the officer in charge of a police station; or

(b) the Commissioner of Police in a manner approved by the Commissioner.

That could be the online crash reporting facility. If we go down to line 29, we will see the provision in the legislation that provides a person with the opportunity to report to the officer in charge of a police station or the Commissioner of Police. The legislation compels police to provide the opportunity for a person to report to the OIC of a police station.

**Mrs M.H. ROBERTS**: Further to this point, can I just clarify that, in practice, if people go into a police station to make reports and the officer in charge of the police station is not there or is not available to take the report, how does that fit with the bill? I return to the other point I made about the effective security of information

provided on the website of the Insurance Commission of Western Australia. How is that information then conveyed to WA Police?

**Mrs L.M. HARVEY**: I am advised that case law defines that the reporting can occur not necessarily specifically to the officer in charge of a police station; it can be to any officer available at the station, an officer who presents at the scene of a crash or, indeed, through an online portal, which is what this clause allows.

**Mr W.J. JOHNSTON**: I just want to clarify that clause 6(2)(b) would allow the police commissioner to outsource the receipt of this information. The example that the minister has given is that the police commissioner could outsource the receipt of the information to the Insurance Commission of Western Australia. Who else could the police commissioner outsource the collection of this information to?

**Mrs L.M. HARVEY**: Just to clarify, the online crash reporting framework is a joint initiative of WAPOL and the Insurance Commission of Western Australia. The database is held by the Insurance Commission and shared by the Insurance Commission and WA Police. It is not proposed that it be outsourced, as the member has suggested; it is proposed to provide an opportunity for people to report directly into that online crash reporting facility rather than show up at a police station and make that report in person.

**Mr W.J. JOHNSTON**: I will put it a different way. Is there anything in this provision that would prevent the Commissioner of Police from outsourcing the collection of this information?

**Mrs L.M. HARVEY**: Yes. The current information-sharing provisions that are contained within the act prevent the commissioner from allowing the information to be shared with any other agency outside of ICWA. I am not sure who the member thinks the information might be outsourced to. Perhaps if he could clarify what he is getting at, we might be able to answer his hypothetical.

**Mr W.J. JOHNSTON**: It is not a hypothetical. The clause states —

> the Commissioner of Police in a manner approved by the Commissioner.

Clearly, we are envisaging that the Commissioner of Police will not personally answer the telephone. Clearly, that is not contemplated by this provision. The minister is saying that this provision will authorise the Insurance Commission through this database. I am asking a very simple question. Let us say that the police commissioner decided to engage XYZ Pty Ltd to run its computer systems and develop a portal that allows for the reporting of accidents. What provision in this bill prevents the police commissioner from approving an outside organisation to provide the portal for the recording of the information?

**Mrs L.M. HARVEY**: Under the information-sharing provisions of the Road Traffic (Administration) Act that I referred to previously —

**Mr W.J. Johnston**: Which section is that?

**Mrs L.M. HARVEY**: It is section 12 through to section 16. Basically, that legislation controls the way that the commissioner can deal with information. I am advised that those provisions would prohibit the commissioner from having any entity other than government, being ICWA, to hold that information.

**Mr W.J. JOHNSTON**: Is the minister saying that this relates to section 12 of the Road Traffic (Administration) Act 2008? For the benefit of Hansard, it relates to the exchange of information between the CEO and the Commissioner of Police. Section 13A relates to an exchange of information between the CEO and other authorities. Section 13B relates to disclosure of information to the Commissioner of Main Roads. Section 13C relates to the disclosure of information to the registrar. Those provisions are about the exchange of information between one entity and another. This is different; this is about the collection of information, not the exchange of information. I am still trying to understand what is in the words that we are being asked to approve that says that the police commissioner cannot authorise somebody outside government to collect the information.

**Mrs L.M. HARVEY**: The advice I have is that it would require a further amendment to the legislation to enable a private entity to collect that information, and that amendment is not being proposed. We are adding an opportunity for a person to report the crash through an online facility held by police and the Insurance Commission of WA instead of being compelled to report in person at a police station. It does not allow for the online crash reporting portal to be sold or privatised or any of those things; it allows only an additional opportunity for an online reporting facility for people who would prefer not to report in person at a police station. That is all this clause will do.

**Mr W.J. JOHNSTON**: So, is the government quite happy to have an accident involving a death reported solely through an online portal?

**Mrs L.M. HARVEY**: No, that is not what we are saying at all.

**Dr A.D. Buti**: Yes, it is.

**Mrs L.M. HARVEY**: No, it is not. Police are required to attend fatalities. That is not a relevant question.

**Mr W.J. JOHNSTON**: Actually it is, minister, because I just read out the words from the blue bill. I will not read every word, but it states —

> (1) If a vehicle driven by a person (the ***driver***) is involved in an incident occasioning bodily harm to the driver or another person, the driver must report the incident forthwith to —
>
> …
>
> (b) the Commissioner of Police in a manner approved by the Commissioner.

As I understand it, the minister has said to me that that is particularly referring to the ICWA online portal. Subsection (2) states —

> If a person contravenes subsection (1) and the incident occasioned death or grievous bodily harm, the person commits a crime.

Clearly, subsection (1) contemplates people being killed in an accident. What the police do, of course, is for the police, and I am not saying that the police will not respond to an online report, but it seems to me that that is exactly what the minister is saying. She is saying that if a person kills somebody in a traffic accident, it is okay for them to pull out their mobile phone and report that to ICWA through the online portal. That is extraordinary.

**Mrs L.M. HARVEY**: I am advised that the scenario the member has proposed will not be enabled by this legislation. That is all I can say.

**Mr W.J. JOHNSTON**: Of all the ridiculous answers given by police ministers over the last eight years, that is the top one. Let us have a look at this. Tell me which word states that that cannot happen. The minister has said to me on a number of occasions that proposed subsection (1)(b) refers to the ICWA accident reporting portal and she directed me to the Road Traffic (Administration) Act 2008 and detailed all these privacy provisions in sections 12 to 16 and said that it was all about making sure that the information could be exchanged only within government. Subsection (2) clearly states that if a person has not reported the accident to ICWA's portal and the incident occasioned death or grievous bodily harm, they have contravened the act. That means that the minister is saying that she is satisfied for a person to report a death in a traffic accident to ICWA. If she is saying that that is not the case and that in fact the Commissioner of Police will not approve reporting to ICWA, I am relaxed about that, but she cannot just say that she is talking about the ICWA portal but it will not have deaths reported to it. Given that the accidents that include deaths will be reported through the ICWA portal, what mechanism will ensure police attendance at a serious accident in which somebody is grievously harmed or has died?

**Mrs L.M. HARVEY**: The advice I have is that in the circumstances the member has described, a range of requirements detailed in other sections of the legislation require a person to stop and render assistance, call for assistance and not leave the scene of the crash, and there is a range of other areas. This is about the ability for somebody to report the crash in a timely fashion and to give details of it. I do not think I can further explain this to the member's satisfaction. The advice I have is that the scenario the member has described could not be enabled by this clause. I think the member needs to take this amending clause in the context of the remainder of the legislation.

**Mr W.J. Johnston**: I am.

**Mrs L.M. HARVEY**: The member says that he is; I say that he is not. He is saying that the words in this clause will somehow enable a person who has been involved in a traffic crash in which somebody has been killed to do an online report about it and have no other consequences. That is not what this enables.

**Mr W.J. Johnston**: That is exactly what you told us.

**Mrs L.M. HARVEY**: No, it is not.

**Mr W.J. JOHNSTON**: I agree that other provisions relate to calling for assistance and making sure that an ambulance turns up and all those things, but that is not what we are talking about. This is about reporting bodily harm or property damage to police. That is what it states. Proposed section 56 of the blue bill that the minister has provided to us is titled "Driver in incident occasioning bodily harm or property damage to report incident to police". That is the bit we are talking about, not whether they render assistance or call an ambulance. We are talking about telling the police. The minister is telling me that reporting a death to ICWA is sufficient. I am happy for that to be the minister's answer, but the next question is: how will ICWA make sure that a police officer turns up? Let us assume it is a shared system.

**Mrs L.M. Harvey**: It is.

**Mr W.J. JOHNSTON**: I understand that if a person has killed somebody and they ring the police station, it will almost certainly send out a police officer. I could not imagine a circumstance in which that would not happen. How will it happen here? I do not understand why we have done this in this provision in proposed subsection (1). It is not a problem in proposed subsection (4); I understand why online reporting would be allowed if it is an incident involving property damage, but why would online reporting be allowed when somebody has been killed? It just does not make any sense. Anybody who read the legislation who was not here defending the indefensible would agree with me. There are no circumstances in which reporting to police an accident involving death in an online report would be sufficient. I bet the minister that in her heart of hearts she agrees with me. We recently dealt with the deletion of section 50, because, as the minister explained to us in both her explanatory memorandum and the chamber, there was an error in the previous drafting of the legislation that missed something important. Everyone makes mistakes. That is not a criticism; it is just an observation. Here, equally, we have exposed an error. No person—I suspect that includes the minister—would think that reporting a death online would be sufficient, because that would be stupid and I do not think there are stupid people in the chamber. I think the minister should just say, "This is probably a mistake that we have had made, just like we made the mistake in section 50, which we had to delete because it led to the acquittal of a person who was perhaps otherwise guilty of a charge" and acknowledge that it is a mistake. I do not have a problem with the concept of reporting damage to a vehicle through an online portal, but there is absolutely no circumstance in which reporting the death of a person through an online portal would be sufficient.

**Mrs L.M. HARVEY**: Member, to be really clear, police attend road crashes when there is a death. The report is then generated by police and there will be no requirement for a person in those circumstances to present at a police station or file a report through the online crash reporting facility. There is a requirement for people involved in these crashes to render assistance, and that is covered under other sections of the act—to call emergency services and police. Police would attend the crash and generate a report into a death. This provision will merely enable people involved in less serious incidents the opportunity to report through an online crash-reporting framework database that is being developed between the Insurance Commission of WA and Western Australia Police, or to report in person to a police station. It is an additional opportunity. Currently, the legislation does not allow for an online reporting function for traffic crashes. This will enable people the opportunity to report those matters online, as a lot of people choose to, rather than in person at a police station. But if there is a death, police attend at the scene. That is what happens currently.

**Mr W.J. JOHNSTON**: I am not quite sure how it is that the police attend—they get told to attend; they get told that something has gone wrong. One of the ways that they get told that something has gone wrong is that people report accidents to the police—which is hardly a surprise. Now, the minister is proposing that for accidents involving deaths she is authorising people to report through the online portal. Yes, the minister is going to develop some system to ensure that the police look at the online reports. There will probably be a box on the portal. Imagine that there will be a little box on the portal that a person ticks that asks: did anybody die in the accident? A person can tick yes and that gets a red flag in the police service, so they send a police officer out.

**Mrs L.M. Harvey**: That's a pretty offensive assertion, member—come on. It is very offensive to suggest that Western Australia Police and the Minister for Police would suggest a box-ticking function to report a death.

**Mr W.J. JOHNSTON**: How will it be done, minister? The minister is asking us to agree with her provision, but we do not; we think it is stupid. We think it is just like the mistake the minister made the last time we dealt with this legislation, when section 50 was not deleted from the act. The minister took two pages to explain the mistake she made last time she asked us to deal with this legislation.

**Mrs M.H. Roberts**: There's another mistake.

**Mr W.J. JOHNSTON**: We have not even got to the 20 pages of amendments to the minister's legislation that come up later. As the minister did in section 4, she made a mistake. That is what we had to fix, and nobody had a problem with that—everybody makes mistakes. It took two pages for the minister to explain why she made a mistake. This is an error. I do not hold the minister personally responsible for that error, I am sure that this is the advice she was given, but the facts remain that she is asking us to authorise reporting a death through an online portal. That is what the minister explained to me. I asked the minister whether it could be outsourced and how it would be arranged, and she explained that the only way that it could be done was through this ICWA portal, and that is dealt with in sections 12 to 16 of the Road Traffic (Administration) Act 2008. That is what the minister told me. I did not ask the minister to put those words in her mouth; I just asked her questions and she answered them. The minister is now saying it was her explanation a couple of minutes ago, but she is changing her explanation now. Her explanation now will be different from when I asked her whether the police commissioner could outsource the arrangements. The problem is not on this side of the chamber, and, quite frankly, it is not on the other side of the chamber; it is with the drafting of the words the minister is asking us to

agree to. I understand the proposed amendments to subsection (4), but this provision is about asking us to agree to online reporting when there is a person with bodily harm, grievous bodily harm or there has been a death or other injury to a person. Unless there is going to be categories of online reporting, so it can be done when it is a minor incident, but not when it is a major incident, I do not understand it. The minister has not pointed out one clause or one provision that will state that the person has to tell the police that they have been involved in the incident that has caused the death—not one. That is the problem that we have. This problem was not created by members on this side of the chamber; it was created by the drafting of the legislation the minister has asked us to support.

Minister, do not get into a hole and defend this legislation. There is that great political advice: we are in a hole, stop digging. The minister is in a hole, she should stop digging. The minister should stand up and say that she understands the points we are making and they will have a look at this as the legislation passes between the chambers, because that is the sensible approach. Any other one and they are just digging further.

**Mrs L.M. HARVEY**: Member, section 56, which is the section that we are amending, is titled —

**Driver in incident occasioning bodily harm or property damage to report incident to police**

The amendment is that instead of a person being required to report the incident forthwith to the officer in charge of a police station, they can report to the officer in charge of a police station or to the Commissioner of Police in a manner approved by the commissioner. If the member looks at the subsections of section 56, he will see that there are penalties of imprisonment and disqualification from holding a driver's licence if a person does not report an incident occasioning death or grievous bodily harm appropriately. It is a crime and there is a consequence. All we are doing is providing an additional opportunity for people who would prefer to report online for the minor incidences of bodily harm or property damage to report in person to a police station or through the online crash reporting facility. If people inappropriately use either mechanism, significant penalties are available under the other subsections of section 56. What the member has been consistently applying is incorrect. I believe that the legislation and the amending clauses will do what we propose it will do—that is, allow people the ability to report minor offences and property damage online instead of to a person at a police station. Police will still attend traffic crashes that involve fatal or serious injuries, as they do now. Police attending at those scenes will generate the report and there will be no additional requirement for the driver involved in those incidents to also report because the police will attend and the report will be taken. I do not have anything to further elaborate on this. I can furnish the member with the remaining subsections of section 56 if that might help him to understand the context of this amending clause. I put to the member that the scenario that he has suggested will not be enabled by this clause, and we will just have to agree to disagree, or the member can place an amendment on the notice paper or vote against it; that is entirely the member's prerogative.

**Mr W.J. JOHNSTON**: I am very interested that the minister said that the further provisions of this section of the act provide for penalties for people who report a death to police through the online portal, which the minister described would be used by the police commissioner, which has been established by ICWA. I will just read out subsections (2) and (3) for the benefit of *Hansard* —

> (2) If a person contravenes subsection (1) and the incident occasioned death or grievous bodily harm, the person commits a crime.

The subsection refers to the penalties. Subsection (3) states —

> (3) If a person contravenes subsection (1) and the incident did not occasion death or grievous bodily harm, the person commits an offence.

The subsection then lists the penalties.

The point I make to the minister is that those three potential penalties apply if a person contravenes subsection (1) of the act. Subsection (1) would have to be contravened before the penalties could apply. We can then look at what the minister proposes subsection (1) will state, the way she is asking. It will state —

> If a vehicle driven by a person (the driver) is involved in an incident occasioning bodily harm to another person, the driver must report the incident forthwith to —
>
> (a) the officer in charge of a police station; or
>
> (b) the Commissioner of Police in a manner approved by the Commissioner.

Obviously, we are focusing on proposed paragraph (b). I went through this in some great detail with the minister to make sure that I had nothing wrong. The minister is telling me—I am not telling the minister—that proposed paragraph (b) is about the Insurance Commission of WA accident reporting portal. I did not say that; the minister said that.

**Mrs L.M. Harvey**: It's a shared portal between WAPOL and ICWA.

**Mr W.J. JOHNSTON**: Yes, that is fine. It is a shared portal, blah, blah, blah. At the time, the minister used the term "ICWA's portal" but I do not care. My point is that a person who does not report an accident that causes the death of a person is not in breach of subsection (2) because the act states "if a person contravenes subsection (1)" then the penalties apply. A person has not contravened subsection (1) if they comply with proposed paragraph (b), which the minister explained is the ICWA portal. There is no penalty for not reporting the death of a person through the online portal. Subsection (3) of the act is about a person who does "not occasion death or grievous bodily harm". Again, if the person has complied with subsection (1), which is reporting through the ICWA portal, they will not have breached the rules. That is the problem! The minister is asking us to agree to report death and injury to police through an online portal. That is what she is asking! I am not asking her to do that. The person sitting next to her is not asking her to do that. The Hansard reporter is not asking her to do that. The minister is asking us to do that. It would be great if the minister could show me why the legislation is formed that way. However, at the moment, all she is saying is that it is very complicated. She does not explain why but says that we will have to agree to disagree. What a wonderful term. That is like saying that I prefer blue curtains and the member for Butler prefers red curtains and we will have to agree to disagree. That is not what we are talking about. This is not agreeing to disagree; this is about the words the minister is asking us to insert in the act. She is asking us to agree to the online reporting of death. It is bizarre! It is indefensible. Why does the minister continue to waste the chamber's time defending the indefensible? She is wasting everybody's efforts here and that is crazy. The minister should just get up and say, "I will have a look at this as the bill passes between the houses and we'll fix it up." That is all she has to do.

**Mrs M.H. ROBERTS**: It appears that the minister has confused police department policy and practices and the commissioner's policies and practices with the law. In essence, all we are interested in is the law, not police practice. Police practice is to attend where there is a death. The minister seems to think that it is some kind of a joke or a frivolous thing to suggest that police need to be informed. She just says that somehow they automatically show up when there is a fatality. Sometimes fatalities and crashes occur in very remote places in this state. I drove past a crash site in the Kimberley on a road that sometimes does not have anyone on it for hours. It was the scene of a single-vehicle rollover that had a significant number of people in it—two women and a number of children. Most of the people died in that crash; most of them ended up in the bush some distance from the vehicle. Yes, all their belongings from the vehicle were all over the road. It was a horrific scene. If someone survives an accident in a remote location like that, yes, they are under an obligation to report it. Currently, they are under an obligation to report it to police. They cannot go online and report it; they have to go to a police station. To think that something such as the member for Cannington outlined could occur is most concerning because if a driver maybe has a head-on crash in a location like that, and if the driver survived—they might be injured or whatever—it would appear by the changes to this clause that they can fulfil their reporting requirement by simply utilising their mobile phone and reporting it to ICWA online. It is commonsense to hope that they would call for other services and so forth if they are in a position to do so. However, it seems to me to be wrong that the crash could be reported online. It needs to be reported at a police station. Crashes can sadly occur in the early hours of the morning in other places that are not as remote—perhaps our wheatbelt and the like—and on some of those roads there cannot be another vehicle for hours. Sometimes things occur and if someone survives, they may make their way to receive medical attention or the like. They may be picked up from the incident by someone else and conveyed to a hospital to be patched up there. At some point, they really need to report the accident. What are their obligations? Under this bill, their obligation is just to go online to the Insurance Commission of WA website. This is a very vast state. I do not think that everything can be based on the metropolitan experience of thinking, "Oh well, naturally if there's a serious crash, police will attend and they'll do a report and everything will get done."

The second point I want to make in the time available is that the member for Cannington is quite right. When the minister said that there are penalties for doing things improperly, she referred to section 56(2), (3) and (4), which state that if people contravene subsection (1) for an incident occasioning death or grievous bodily harm, a person commits a crime and there is a penalty of imprisonment for 10 years. However, under the change to this provision, people can now meet the requirements of subsection (1) by reporting online "in a manner approved by the Commissioner". I think I used the words carte blanche before, but this basically gives the commissioner carte blanche to determine the requirements.

**The ACTING SPEAKER**: Member for Armadale.

**Dr A.D. BUTI**: I am not sure whether the member for Midland has completed her question; she has. That is fine then; that is okay.

**The ACTING SPEAKER**: Member for Midland.

**Mrs M.H. Roberts**: I am waiting for my response.

**The ACTING SPEAKER (Mr I.C. Blayney)**: Was there a question?

**Mrs M.H. Roberts**: Yes; maybe the Acting Speaker should have been listening and not talking.

**The ACTING SPEAKER**: I was.

**Mrs L.M. HARVEY**: For the scenario that the member explained in coming across a crash like that, police advise me that the requirement would be for whoever comes across the scene to immediately do everything possible to try to get assistance. Police would obviously need to attend because of the seriousness of an incident like that. It would be highly unlikely that a person involved in that crash would front up to a police station or use an online portal to report a crash of that severity. The first requirement is always to call for assistance to get police, emergency services or the Royal Flying Doctor Service—whoever it might be—to the scene. That may be by whatever means possible. I understand the difficulties of that in regional and remote areas. It is one of the problems and it is one of the reasons we have more fatalities and serious injuries as a result of these crashes; sometimes it takes longer to get assistance and to find out about crashes. The scenario that the member described is not one that we anticipate as a result of the amendment to section 56 that is presently in front of us.

**Mrs M.H. ROBERTS**: I was using the scenario that I raised to talk about an experience in a remote location, but I noted that it may not have been a single-car rollover; it could have been a head-on collision or it could have involved two vehicles. It also could have involved a pedestrian. Sometimes in a very serious crash, some people die and others amazingly come out relatively unscathed. We cannot assume that because a crash involved a number of fatalities, everyone in the vehicle died or that those who did not die are seriously injured. There are many examples every year in this state in which people escape from serious crashes and wrecks relatively unscathed, after an incident that has cost the lives of others. For example, some people may be wearing seatbelts while others are not. Chances of survival for those not wearing seatbelts are remote, but are much better for those wearing seatbelts.

We would be better served here if the minister would take the sensible step, rather than just uncompromisingly surging forward and sticking to her guns on this clause, of perhaps separating out the two issues. I do not think anyone has any objection to reporting incidents online that involve property damage, and maybe even general bodily harm, but if an accident involves death or grievous bodily harm, we think that is a different category. That is where I think we really differ, and we think that it should not be allowable. It is like making a law to allow for online reporting of fatalities and everything up to and including grievous bodily harm when we do not expect people to actually do it. If we do not expect people to actually do it, do not make it law. Make it law that people can report online for lesser bodily harm or property damage, but do not make it law that people will have the option of reporting online an accident that involves serious or grievous bodily harm or death. That is our point of contention here.

The minister tends to answer things by saying that this is the intent; this is what we are trying to do. This is where she often goes wrong with legislation. When we get to the next clause, we will see that the minister has to fix up something from an earlier time in the life of this government when it got something wrong in bringing earlier amendments on this same legislation before the house. Let us not wait until someone asks why a person was allowed to report online an incident in which someone has suffered catastrophic injury or death. There may be other subsequent actions or whatever, but I think my colleague the member for Cannington raised a very sensible and logical point here, on which he has spent some time. I think he has been very reasonable with his suggestion that catastrophic injuries or deaths in road crashes should not be the subject of an online report; they should be the subject of what applies at the moment—that is, reporting to the officer in charge of a police station. That is our point. The change to the capacity to report online property damage or minor bodily harm is a sensible suggestion. It is practical. We can understand it, and we agree with it.

**Mr J.R. QUIGLEY**: I want to deal briefly with a practical situation from my years of experience as a defence lawyer, and the practical considerations that arise in a case like this. From my experience as a defence counsel, when a driver is involved in a serious road accident and does not stop and makes off afterwards, it is very often the case that the motivation behind that action is to avoid being breath-tested, and not to be detected until after the expiration of the four-hour limit under the breath analysis regulations. That is usually coupled with a failure to report forthwith or in a reasonable time.

Some accidents are limited to vehicle damage or the other driver suffering bodily harm, which is the lower definition of bodily harm. As the member for Midland has pointed out, the Criminal Code defines bodily harm as any bodily injury that interferes with health or comfort. On Marmion Avenue, I was involved as a passenger in a traffic accident, in which my wife was driving. We were stationary at a red light, and a car drove straight into the rear of ours. I suspect that the driver might have been on the telephone. The bodily harm that was inflicted was severe whiplash. That would be classified as bodily harm interfering with comfort. Now we go to the definition in the Criminal Code of “grievous bodily harm”, which is another thing altogether. Both the member

for Midland and the member for Cannington pointed out that grievous bodily harm means any bodily injury that endangers or is likely to endanger life or causes or is likely to cause permanent injury to health. That is a very serious matter—far more severe than what my wife suffered recently in the traffic accident I described.

We go now to the drafting of the legislation. Although I can understand what the Minister for Police and the police are trying to get at, in all those traffic accidents in which a person might impact their knee on the dashboard at the time of the collision and hurt their knee or be bruised by the deployment of an airbag in their own vehicle, that is bodily harm. In all those sorts of cases, I can see, with the number of vehicles on the road, why the police or the Commissioner of Police would want to establish a portal for people to report those matters without taking up the time of a station sergeant or whoever. However, in those cases in which the accident has been so serious as to inflict death or grievous bodily harm on the other driver, that is another matter entirely, and they should warrant immediate police investigation. The minister said the police would attend fatalities and more serious incidents like grievous bodily harm.

**Dr A.D. BUTI**: Madam Acting Speaker (Ms J.M. Freeman), I am interested in hearing more from the member for Butler.

**Mr J.R. QUIGLEY**: Other members have pointed out that the police would need to be notified of those serious matters forthwith. Section 56(1) of the act states —

> If a vehicle driven by a person (the ***driver***) is involved in an incident occasioning bodily harm to another person, the driver must report the incident forthwith …

That definition and that requirement encapsulated death and grievous bodily harm as well. There cannot be any greater bodily harm than inflicting death or, obviously, grievous bodily harm. The act has tried to facilitate the police and the process is a bit better by saying that in cases of mere bodily harm that can be done through the portal. The minister then extended an invitation to the opposition to amend the bill. I have signed quite a simple amendment, which I am prepared to table. I am surprised that the draftsmen did not pick it up themselves. The amendment is not complicated. I move —

> Page 4, after line 11 — To insert —
>
> (1) If a vehicle driven by a person (the ***driver***) is involved in an incident occasioning death or grievous bodily harm to another person, the driver must report the incident forthwith to an officer in charge of a police station.

My amendment preserves the situation of causing death and grievous bodily harm. If this amendment is accepted by the chamber, there will be no capacity to report incidents or death involving grievous bodily harm through the portal, and police must be advised immediately by telephone or other method. I am taking up the minister's invitation. This amendment preserves the department's position on all other matters so that matters involving bodily harm or, for that matter, vehicular harm can be done through the portal. But these more serious matters should be reported immediately to the police; that is, death or endangering someone's life. The police have a pressing job to do in those cases, which is to subject the driver to a breath alcohol analysis, and to extend the time to report such matters could compromise the evidence against the driver. It is at the minister's invitation that the opposition has moved this amendment. The minister said if we believed that we should draft an amendment, to move it. It is not a complicated amendment and it does not affect the rest of the legislation but it keeps the stricter requirements for the more serious incidents. I commend this amendment to the chamber. I do not know whether the government will accept the amendment.

**Mrs L.M. HARVEY**: The government will not accept the amendment. Section 56 is about reporting a crash and the threshold is bodily harm or property damage of $3 000 or more. In effect, if we accept the member's amendment, it would require a member of the public to, first of all, understand the difference between bodily harm and grievous bodily harm, and then it would require them to leave the scene of a crash to report to an officer in charge of a police station, which is a complete nonsense.

I know that the member finds this clause difficult to understand, but it provides an alternative way to fulfil the obligation to report a crash that involves bodily harm or property damage of $3 000 or more. That is all it does. The threshold is low, and anything above that requires the same reporting obligation, plus other requirements, depending on the severity of the crash. The government will not support the member's amendment in any way, shape or form. That is the government's position.

**Mr J.R. QUIGLEY**: The opposition is breathtakingly disappointed in the government's position, but not surprised, because the government opposes everything that the opposition puts forward.

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

**The ACTING SPEAKER**: The member for Butler has the floor.

**Mr J.R. QUIGLEY**: The amendment would not change the law for reporting a matter involving death or grievous bodily harm; it preserves the existing position and what a person is required to do under the act. Under the existing legislation, when there is a death or grievous bodily harm, the driver has to report it forthwith, which the courts interpret as "as soon as reasonably possible". If the person is rendering assistance to the injured driver, the court does not require them to leave the scene of an accident to report it. This is a nonsense put up by the government. My amendment preserves the situation as it exists in Western Australia today and as it has existed for many years; that is, a person who is involved in an accident inflicting death or grievous bodily harm on anyone is already under an obligation to report that forthwith to the police. Labor is simply trying to preserve that situation going forward. The government is trying to lower the threshold for reporting deaths and grievous bodily harm. It is breathtaking. For a government that goes to the community and says that law and order is its strong suit, it is unbelievable that it would seek to diminish the legal requirements on a driver involved in a serious crash involving death or grievous bodily harm. Perhaps this is why we have record numbers of deaths on our roads and record crime waves; it is because the government is caught up in its own hubris. All the opposition is seeking to preserve is the existing strict reporting requirement for the two most serious types of traffic accidents causing death or grievous bodily harm. I refer to this nonsense that the driver would not know the difference between grievous bodily harm and bodily harm. Perhaps that is true, and the driver, believing it to be bodily harm, reports through the portal; they would have a perfect defence under section 24 of the Criminal Code—an honest and reasonable but mistaken belief in fact that they thought it was bodily harm so reported it through the portal. How is that driver to know that the person suffered some organ damage that rendered it—not to the naked eye but only on examination in the hospital—grievous bodily harm?

The driver would say that they were not guilty because they treated it as bodily harm and did everything the legislation required. But here the government, in the full knowledge of what the law is today, is stating that it wants to diminish the errant driver's responsibility, and that is unforgivable. That is why we moved this amendment and we will go to a vote on this amendment; we want it known that the government is failing in its duty by diminishing the legal requirements for those drivers who inflict death or grievous bodily harm on others.

**Mrs M.H. ROBERTS**: I am disappointed that the minister has chosen not to respond to the member for Butler's very valid arguments. If anyone has been talking nonsense in this place it is, of course, the minister. She suggests that this amendment will somehow make it too onerous on people and someone would have to leave the scene of an accident forthwith to go to a police station and report it. I point out to the minister that that is the requirement under the law at the moment. For all categories—property damage, minor injury to someone, grievous bodily harm and fatality—people are required to report to the officer in charge of a police station or somebody at the police station, as is the normal practice. That is what is required under law at the moment, yet the minister is trying to take that burden from people who have been involved in a serious crash when either grievous bodily harm or a fatality has occurred. She has said that that is okay and people can report that via an online portal.

As we know, the minister's practice is to try to just steamroll ahead. Her approach in this place is that she has the numbers, the numbers make it right and, therefore, when we have a vote, she will win. Just because the minister will win does not make what she is doing right, and it does not make the law right. As we go through this bill, we will see many other examples of the government making amendments not to any legislation, but to the Road Traffic Act—the same act that is being amended now. Those amendments have been in error and we will get to a couple of those clauses very shortly. We will see why further debate and some reasonableness on behalf of the government is a sensible thing. The minister knows the import of what we are saying. She has advisers there. She can get a briefing. We are happy to put this clause on hold or go on to something else or come to an arrangement if she wants time to reconsider the import. She can change it if for some reason she does not like the exact wording that the member for Butler has put forward, but I think we have made the intent very clear.

All we are trying to do with this amendment is effectively re-establish the burden on those people who are involved in a fatal crash or a crash in which grievous bodily harm occurs so that they have only one way of reporting it and do not have the option of the online report. We have no argument, as I have stated before, with online reporting for general crashes or crashes that result in only property damage or minor damage. I think the member for Butler, with his many years of experience in the courts and with the Road Traffic Act of 1984 —

**Mr J.R. Quigley**: It is 1974.

**Mrs M.H. ROBERTS**: Sorry; it is 1974.

**Mr J.R. Quigley**: Frightening, isn't it?

**Mrs M.H. ROBERTS**: That is right.

The member for Butler knows what occurs in practice when there is a reasonable defence, as he described, and someone does not know the difference between grievous bodily harm and bodily harm or it turned out that there

was some internal organ damage that someone could not have reasonably considered. Speaking about police practice, the reality is that if there is no reasonable prospect of convicting someone on that charge, the police are highly unlikely to pursue it. The member for Butler points out that a person would have a very reasonable defence if, to their naked eye, it appeared to be bodily harm and they were unaware of some internal injury that took it to the category of grievous bodily harm. If they were charged, they would have a defence, but we would expect that their lawyer would probably present that to the police and the police would not pursue that charge.

Minister, we have made a case here. We think it is reasonable. We do not think that the minister can deem online reporting to be acceptable in those situations. I understand that she wants to move everything—as many reports as possible—online. Yes, we are happy to have the bulk of reports—90 per cent—online, but some should not be reported online.

**Mrs L.M. HARVEY**: As I said, the members seem to be implying that the primary requirement of persons involved in serious crashes is somehow —

**Mrs M.H. Roberts**: A requirement, not primary. We are not asserting it is the primary. Do not put words in our mouths.

**Mrs L.M. HARVEY**: Are you done?

**Mrs M.H. Roberts**: Do not mislead the house. Then you do not have to put up with this.

**The ACTING SPEAKER (Ms J.M. Freeman)**: Members!

**Mrs L.M. HARVEY**: It has been implied that somehow this amendment in clause 6 to section 56 means that the only thing that will be required now of a person involved in a crash in which someone is killed or seriously injured is to fill in an online report but that is just not the case. The primary requirement is always to stop and render assistance —

**Mrs M.H. Roberts** interjected.

**The ACTING SPEAKER**: Members! The minister has the floor. Thank you.

**Mrs L.M. HARVEY**: All we are doing is making an administrative amendment to allow people to report crashes —

*Point of Order*

**Mrs M.H. ROBERTS**: I believe the question before the Chair is the member for Butler's amendment, not the minister's amendment to the act. I think the minister should be responding to the points that the member for Butler and I have made about the member for Butler's amendment.

**Mrs L.M. HARVEY**: As I was saying —

**The ACTING SPEAKER (Ms J.M. Freeman)**: I have to rule on the point of order. There is no point of order.

*Debate Resumed*

**Mrs L.M. HARVEY**: As I was saying, this is an administrative enhancement. Currently, a driver involved in a crash in which there is bodily harm or property damage of $3 000 or more has an ability to report online, but also an obligation to report in person at a police station to the officer in charge of that police station. This enables that person to report online or in person to a police station or over the phone to police, such as happens at present. The effect of this amendment is contrary to what is simply an administrative enhancement and the government will not be supporting it.

Members seem to think that the effect of this amendment is to change the obligations when reporting crashes in which there is a fatality or a serious injury. It does not. It does not fundamentally change the requirements of individuals involved in crashes in those circumstances. We will not be supporting the amendment, as I said previously, because it does nothing to enhance the legislation or the workability of section 56. It is contrary to the workability of section 56 because it makes it more confusing. We will not support it.

**Ms M.M. QUIRK**: The minister has not addressed one particular issue that the member for Butler raised, which is that this proposed regime will mean that a number of drivers who are affected by drugs and/or alcohol will effectively slip through the cracks. The requirement for people to report online, as opposed to attending a police station, will mean that fewer drunk-drivers will be brought to book because the police have not attended. I will give the minister two examples of when this has occurred in my electorate. One was a case in which a vehicle mounted the curb and wrote off a car that was in a driveway. When police were contacted, the driver was told to lodge the report online because it was only property damage. But for the fact that an Australian Federal Police

officer lived across the road, that person, who was clearly affected by alcohol, would not have been in a position to present himself to the police.

The second matter that I wanted to raise was that recently I witnessed the aftermath of a crash in my electorate. Someone was lying on the road subsequent to that accident; obviously, it was the driver or a passenger. They were on the road for about 15 minutes. During that time no police came and no ambulance came. It seems to me that if people are lying on the road, there is a chance that they will at least have incurred some level of bodily harm. The next day I was concerned about whether police attended and whether somebody was seriously injured. I contacted the police at Wanneroo, which is where the nearest police station is located under the government's so-called local policing model, and they said that they would not attend unless at least $6 000 worth of property was damaged. If somebody is lying on the road for at least 15 minutes, chances are that there are implications as a result of the accident. Ironically, some days later, I drove past the street in which that accident occurred and saw markings on the road. Clearly, ex post facto, the police or the crash people or whoever investigates crashes had to go down there after the event, without witnesses being around, and try to reconstruct what happened. It seems to me that we are really opening the door for people who are driving inappropriately whilst under the influence to slip through the net.

**Mrs L.M. HARVEY**: The scenario that the member described in which police have not attended an incident in response to a report being made is a different scenario. People still have an obligation to report crashes in the manner prescribed by section 56 of the act. Anyone who comes upon a scene like that has an obligation to stop and render assistance and then call emergency services. Generally if that happens, emergency services attend. Sometimes the system fails, which is unfortunate, but the amendment to clause 6 proposed by the member for Butler will not change that outcome in any way, shape or form. It will just confuse what is simply an administrative amendment to enable online reporting of crashes involving property damage of $3 000 or more or bodily harm. That is all it does.

**Ms M.M. QUIRK**: The minister has still not addressed the issue. This arrangement will mean that more drivers who are affected by alcohol and/or drugs will slip through the net.

**Mrs L.M. HARVEY**: The way that drink-drivers behave when they have been involved in a crash is one of those vexing issues. I put to the member that if somebody is under the influence of alcohol, regardless of whether the member for Butler's amendment exists, the drink-driver will likely behave in the way that they were going to behave. Some people will do the right thing and stop and render assistance and call for emergency services and other people will run. That is the nature of people who offend in that way. There is an existing requirement to report, and still drink-drivers run away. Unfortunately, changing and enabling the facilitation of opportunities for people to report will not change the behaviour of drink-drivers. The member for Butler's amendment will not have any impact on that either.

**Mrs M.H. ROBERTS**: I think the member for Girrawheen has raised some valid points. She has some legitimate areas of concern. Rather than dismiss those areas of concern, the minister might be better advised to turn her mind to how they might be addressed. Most of us in this chamber know that police attend far fewer road crashes. If a crash involves just property, try getting police to attend. It is not very easy because it is generally not their practice to attend anymore. Ten or 20 years ago, they would attend all crashes. If the damage is estimated to be worth $5 000 or whatever, they will ask whether anyone has been injured and they will advise the caller to get the cars out of the way, resolve it themselves and report it online. I understand that police have other things to do and other priorities, but when there are serious crashes and when there is grievous bodily harm or a fatality or the like, obviously police attendance is required and generally police attend. Sometimes, because of the location, it is not possible for them to attend promptly. I am not suggesting for a moment that that is their fault; it is just a case of the distances involved in this vast state.

The member for Girrawheen raised a valid point. I know that other clauses in this bill relate to the testing of people who have been consuming alcohol or using drugs. Over recent years I have heard of many examples in which those people who have been involved in a crash are concerned that the other party was perhaps under the influence of drugs or alcohol and effectively gets off. The minister's point, I gather, in response to the member for Girrawheen, is that this clause does nothing to exacerbate that. It certainly does nothing to improve the situation. I put it to the minister that potentially it exacerbates the situation because it makes it far easier for the person to duck off home and do something online. They do not have to make an appearance at a police station within a reasonable period, irrespective of the fact that they have caused grievous bodily harm to someone. That grievous bodily harm may have long-term, ongoing effects on a person's health and wellbeing and on their ability to hold down a job. It might require them to be on medication. That individual could have a range of medical consequences and end up with that residual worry or concern at the back of their mind. Was the person who crashed into them under the influence of drugs or alcohol? The fact is that they will never know because the

police do not attend these incidents. There is no compulsion for the person to be breath-tested and the like. To my way of thinking, this clause basically serves to encourage people to leave the scene at the earliest opportunity and report it online. If they hole themselves up somewhere, they have little chance of being tested. I fully appreciate that if a person has caused someone's death, other provisions under the law require them to take other actions. I am not for a moment suggesting that these are the only provisions.

We started talking about the member for Butler's amendment. I think it is sensible. The minister should not be quite so intransigent. I know that she has received advice. We know that in the past she has had poor advice. We know that in the past the advice that she has had and the amendments she has put forward have proven to be unworkable and faulty in practice. That is why we are rectifying a number of those things in this amendment bill. It is a shame that the minister does not view this stage of the legislation in a more welcoming manner so that we can get some real benefits for the community of Western Australia.

**Mr J.R. QUIGLEY**: I have been a fool, when I look at this amendment. A lot of debate was going on earlier about how we are lowering the threshold when an incident involves death or grievous bodily harm. After conferring with her advisers, the Minister for Police invited the amendment. More fool me! I took the minister at her word that this part of the process was about improving the legislation. I took the minister at her word. I will never be silly Johnny again.

**Dr A.D. Buti**: Very gullible.

**Mr J.R. QUIGLEY**: I was very gullible. I moved an amendment that would preserve the current situation for drivers involved in an incident involving death or grievous bodily harm. I took the minister at her word that she really wanted to get on top of all of this, but then she came up with all these fantastic excuses why the government would not do it. The first fantastic excuse was that drivers would not know whether the person suffered grievous bodily harm or mere bodily harm. That makes nought difference. If the person has acted in good faith on the basis that it was bodily harm, he or she has a good defence. Gullible Johnny took the minister at her word and went to the trouble of drawing the words of the amendment from the existing legislation that has been in place in Western Australia for over 30 years and fault has not been found with it.

What the government and the Commissioner of Police are trying to do here is facilitate an easier reporting requirement for those lower grade accidents or crashes—I do not like to call them accidents, as they very seldom are an accident; they are usually a crash—that would put less burden on the driver and less burden on the department, but all those crashes would be properly reported. I was gullible in thinking that the department and the government wanted to be strident against those drivers who had a crash after drinking alcohol that involved death or grievous bodily harm and then decamped the scene and did not want to report it immediately at two o'clock in the morning when they got home by filling out a form on an online reporting portal. Who would ever know to breath-test them? Nobody would, because it would be done in the middle of the night on a portal. That is all right for a low-grade crash, but it is not good enough for the ones in which people's lives have been taken or put in danger. The minister is not assisting the people of Western Australia. If we could take a straw poll of the public, I know what the public would say: "When a person kills someone or takes them within an inch of their life in a crash, they have an immediate obligation to report that to the police so that the most serious investigation can be launched immediately before the four-hour time limit has elapsed when the evidence is lost." More fool Johnny for taking the government at its word that it invited an amendment.

**Mrs L.M. HARVEY**: As I have said ad nauseam, the requirement for people to report a crash will not be changed by this amending clause in any way, shape or form. What I put to the member earlier was that the options for members in this chamber, as he is well aware, are to oppose a clause or put forward an amendment if they disagree with what has been presented. I did not seek the member's amendment because I thought this clause needed improvement. I do not believe it needs amending and that is why the government opposes the amendment. However, it is the member's option to do that, as it is for any other member. All I did was remind the member of his options if he disagrees with the clause. The government's position remains: we will not support the member for Butler's amendment.

*Question to be Put*

**Mr J.H.D. DAY**: I move —

That the question be now put.

*Division*

Question put and a division taken, the Acting Speaker (Ms J.M. Freeman) casting her vote with the noes, with the following result —

Ayes (32)

| | | | |
|---|---|---|---|
| Mr P. Abetz | Mr J.H.D. Day | Dr G.G. Jacobs | Dr M.D. Nahan |
| Mr F.A. Alban | Mr J.M. Francis | Mr S.K. L'Estrange | Mr D.C. Nalder |
| Mr C.J. Barnett | Mrs G.J. Godfrey | Mr R.S. Love | Mr J. Norberger |
| Mr I.C. Blayney | Mr B.J. Grylls | Mr W.R. Marmion | Mr D.T. Redman |
| Mr I.M. Britza | Dr K.D. Hames | Mr J.E. McGrath | Mr A.J. Simpson |
| Mr G.M. Castrilli | Mrs L.M. Harvey | Ms L. Mettam | Mr M.H. Taylor |
| Mr V.A. Catania | Mr C.D. Hatton | Mr P.T. Miles | Mr T.K. Waldron |
| Mr M.J. Cowper | Mr A.P. Jacob | Ms A.R. Mitchell | Mr A. Krsticevic *(Teller)* |

Noes (18)

| | | | |
|---|---|---|---|
| Dr A.D. Buti | Mr F.M. Logan | Ms M.M. Quirk | Mr P.B. Watson |
| Mr R.H. Cook | Mr M. McGowan | Mrs M.H. Roberts | Mr B.S. Wyatt |
| Ms J. Farrer | Mr M.P. Murray | Ms R. Saffioti | Mr D.A. Templeman *(Teller)* |
| Ms J.M. Freeman | Mr P. Papalia | Mr C.J. Tallentire | |
| Mr D.J. Kelly | Mr J.R. Quigley | Mr P.C. Tinley | |

Pairs

| | |
|---|---|
| Ms W.M. Duncan | Ms S.F. McGurk |
| Mr N.W. Morton | Ms L.L. Baker |
| Ms E. Evangel | Mr W.J. Johnston |

Question thus passed.

*Debate Resumed*

**The ACTING SPEAKER (Ms J.M. Freeman)**: The question is that the words to be inserted be inserted.

*Division*

Amendment put and a division taken, the Acting Speaker (Ms J.M. Freeman) casting her vote with the ayes, with the following result —

Ayes (18)

| | | | |
|---|---|---|---|
| Dr A.D. Buti | Mr F.M. Logan | Ms M.M. Quirk | Mr P.B. Watson |
| Mr R.H. Cook | Mr M. McGowan | Mrs M.H. Roberts | Mr B.S. Wyatt |
| Ms J. Farrer | Mr M.P. Murray | Ms R. Saffioti | Mr D.A. Templeman *(Teller)* |
| Ms J.M. Freeman | Mr P. Papalia | Mr C.J. Tallentire | |
| Mr D.J. Kelly | Mr J.R. Quigley | Mr P.C. Tinley | |

Noes (32)

| | | | |
|---|---|---|---|
| Mr P. Abetz | Mr J.H.D. Day | Dr G.G. Jacobs | Dr M.D. Nahan |
| Mr F.A. Alban | Mr J.M. Francis | Mr S.K. L'Estrange | Mr D.C. Nalder |
| Mr C.J. Barnett | Mrs G.J. Godfrey | Mr R.S. Love | Mr J. Norberger |
| Mr I.C. Blayney | Mr B.J. Grylls | Mr W.R. Marmion | Mr D.T. Redman |
| Mr I.M. Britza | Dr K.D. Hames | Mr J.E. McGrath | Mr A.J. Simpson |
| Mr G.M. Castrilli | Mrs L.M. Harvey | Ms L. Mettam | Mr M.H. Taylor |
| Mr V.A. Catania | Mr C.D. Hatton | Mr P.T. Miles | Mr T.K. Waldron |
| Mr M.J. Cowper | Mr A.P. Jacob | Ms A.R. Mitchell | Mr A. Krsticevic *(Teller)* |

Pairs

| | |
|---|---|
| Ms S.F. McGurk | Ms W.M. Duncan |
| Ms L.L. Baker | Mr N.W. Morton |
| Mr W.J. Johnston | Ms E. Evangel |

**Amendment thus negatived.**

**Dr A.D. BUTI**: With regard to reporting under clause 6, at Armadale Police Station, for example, after 4.30 pm on a weekday or weekend, one would not find the officer in charge of the police station. Do not tell me that

people can ring the bell, because people have often rung the bell at Armadale Police Station and there is no-one there; they are told to attend Cannington Police Station. Proposed section 56(1)(b) states —

> the Commissioner of Police in a manner approved by the Commissioner.

This appears to give the legislative power for the Commissioner of Police to, at any time, decide on the manner in which reporting can take place. How is that to be reported to the public if the manner in which the report is made is changed by the Commissioner of Police? This is not even a regulation; it gives the commissioner complete discretion, unless there is something else in the bill that I have not read that puts a limit on what he can do. It states, "the Commissioner of Police in a manner approved by the Commissioner." My questions are, firstly, what is the process for the police commissioner to change the manner of reporting? Secondly, how is the commissioner to communicate that to the public? Thirdly, if a member of the public, the driver in question, is unable to report to an officer in charge of a police station—for example, Armadale Police Station at night or on the weekend—and they are unaware of any change that the police commissioner has put in place to the manner of reporting, could that presumably be a defence of a mistake to fact?

**Mrs L.M. HARVEY**: As we have said, the requirement is on an individual to report an accident in which there is bodily harm or property damage of more than $3 000, by one of the mechanisms prescribed in this clause, which are reporting to an officer in charge of a police station or reporting to the Commissioner of Police in a manner approved by the commissioner. One manner that would be approved by the commissioner is the online crash reporting facility, which is the shared database of the Insurance Commission of WA and WA Police, to allow for online reporting in those circumstances. That is the mechanism; the commissioner would have the online portal available or people could present at a station or call 131 444.

**Dr A.D. BUTI**: It does not state that. The third part is not actually legislated for in this bill. It is quite clear. It talks about reporting to the officer in charge of a police station or the Commissioner of Police in a manner approved by the commissioner. The third option mentioned by the minister is not legislated for. At the moment it is the portal, but what if the commissioner changes it? The bill clearly states, "the Commissioner of Police in a manner approved by the Commissioner." The commissioner may change that manner of reporting. The portal may not be the prescribed manner that the police commissioner seeks in another year or two; he may decide on a different manner. If the Commissioner of Police changes the manner in which someone can report an accident, how is that to be communicated to the public? We have an online method now; fine, but there is nothing under this clause to prevent the Commissioner of Police changing that manner of reporting. My question is: if the commissioner changes the manner of reporting, how is that to be communicated to the public?

**Mrs L.M. HARVEY**: The member says that calling the police is not legislated for. There is actually case law that provides that reporting to an officer in charge of a police station can be through a phone call or in person. However, "the Commissioner of Police in a manner approved by the Commissioner" provision is to allow for online reporting. That would be communicated to the public by the same methods by which we communicate these opportunities now. When people call police, the options for reporting are given to them. They are also given to them through the police website and various other education campaigns that the police run. That will be how this is communicated. Should technology change and the format of the online crash reporting facility changes as a consequence, the commissioner would then be able to enable people to report in that different way, but that is the mechanism.

**Dr A.D. BUTI**: That might be the case, but the difference here is that the minister has legislated; she has given the Commissioner of Police power, under legislation, to determine the manner of reporting. There is nothing necessarily wrong with that.

**Mrs L.M. Harvey**: The opportunity to report, not the requirement to report or the things that they're reporting.

**Dr A.D. BUTI**: No, the words under section 56(1) of the Road Traffic Act are "must report the incident forthwith" to the officer in charge of a police station—that is one method. This is the minister's own clause. The driver has two ways of reporting. One is to the officer in charge of a police station and the second is to the Commissioner of Police in a manner approved by the commissioner. They are the only two methods that are legislated for under clause 6(1), which amends section 56(1) of the act. The question still remains. If the Commissioner of Police changes the manner in which someone can report, the minister says that it will be reported in the normal way. However, the fact is that this is not just a policy position; this is legislated for, and therefore if the driver does not report it to the officer in charge of a police station, for whatever reason—I can tell the minister that they would have trouble doing so in Armadale, and might be referred to Cannington; there have been a lot of hiccups there, and we can talk about that another day—they can report in an alternative manner, as approved by the Commissioner of Police.

*Sitting suspended from 6.00 to 7.00 pm*

**Dr A.D. BUTI**: I will not labour the point, minister; we will move on. I just think it is important in the sense that the legislation does give the Commissioner of Police discretion on the manner in which people can make a report. I am just wondering whether any thought has been given to trying to standardise the way the information is going to be relayed to the public. If there is discretion, it could change at any time. I worry that members of the public will not be made aware of the method of reporting if they do not go to an officer in charge of a police station.

**Mrs L.M. HARVEY**: Indeed, one of the advantages of an online crash reporting facility is that it can have a more standardised format and can guide people through the process. Hopefully, there will be more consistency and improvement in the way some of these crashes are reported, because there will be more of a structured format around an online reporting form. However, with respect to the way in which the commissioner will advise people of those opportunities if there are additional means for people to report in the future, that would be advertised and promoted through the normal means—through the webpage; as an option when people call for police assistance; or, indeed, in the material that is often available for people in police stations as well.

[Quorum formed.]

**Mr J.R. QUIGLEY**: Clause 6 amends section 56 of the Road Traffic Act. If a driver fails to report in the manner prescribed, which we now know will be either to police or through the portal, the act provides in subsection (2) that if a person contravenes the reporting provisions as prescribed in subsection (1), they commit an offence, and the penalty is imprisonment for 10 years, or something less. In any event, the court convicting the person must order that the offender be disqualified from holding or obtaining a driver's licence for 12 months. Then, on summary conviction, it is imprisonment for 12 months or less and, in any event, 12 months' disqualification. It is the same with damage to property. Our concern, going back to the example I gave before, is that most of these types of offences occur after a person has left the scene of an accident; not always, but all too often it is after the person has left the scene of an accident and they then do not report it. That is the very reason they have left the scene of the accident. That, of course, is the offence under the section that we discussed before, being section 54. So, the person has the accident, knows they have been drinking and decides to decamp. They are not going to go away and report it forthwith, because they do not want to be breath-tested straightaway. It is probably just a drafting error—surely the government did not want to go soft on these drivers—because the act provides for a period of disqualification of not less than 12 months but it does not require the court to make that cumulative. Very often I have appeared when people have been sentenced for multiple offences but the period of suspension is not always a cumulative period; that is, it is suspension or disqualification from the time of conviction. The judge will suspend a person's licence and will look at the act and find that he is required to do that for 12 months for that offence. That will perhaps follow the previous charge of failing to stop and render assistance. If the driver has caused grievous bodily harm or death, the person's licence will be ordered to be disqualified for two years, and then, in any other case, for 12 months. The summary conviction is 12 months. The judge will say, "Yes, sergeant, I turn to the next complaint on the list, which is failing to report within the time. I fine you there and suspend your licence for 12 months." There is no requirement to make that a cumulative term of disqualification. The opposition will helpfully move a further amendment to this clause. This amendment was drawn up by the Clerk Assistant of the chamber.

**Mrs M.H. ROBERTS**: I would like to hear the member's amendment and some further explanation of it.

**Mr J.R. QUIGLEY**: I move —

> Page 4, after line 23, to insert —
>
> (2) In sections 56(2) and 56(3) where the words "not less than 12 months" appear in 3 places, insert:
>
> cumulative upon any other period of disqualification of the driver's licence

I will hand that to the Clerk. A photocopy is already available for the ministerial table. It is a rather simple amendment. It means that there will be a very sanguine punishment for those who not only fail to stop but also subsequently fail to report. They will receive an extra period of suspension. Over the years, I have had many clients who have been suspended for 12 months on one charge, 12 months on another charge and 12 months on another charge. After leaving court, they ask me how long their licence is suspended for and I tell them it is 12 months from the time of conviction. We move to take away any doubt that this will be in the legislation as a cumulative period of disqualification for people who fail to report. It will not be cumulative if that is all they have done. If they have stopped and rendered assistance and they are not drunk, and they have failed to report—they may fail to report vehicular damage or simple bodily harm, for which they will get a 12-month suspension—they will get a 12-month suspension. If they commit two offences, the period of disqualification will be statutorily prescribed as cumulative. Who could argue with that? I put that question to the chamber and hope that we get concurrence on this.

**Mrs L.M. Harvey**: I am just checking with my advisers.

**Mrs M.H. ROBERTS**: I understand that the minister is giving this matter consideration. I hope that is a good sign. I think the amendment put forward by member for Butler is very sensible and practical. He knows the court system and, indeed, he has represented probably hundreds, if not thousands, of clients before the courts on a range of charges. There needs to be an appropriate penalty; loss of licence is an appropriate penalty. However, if the penalty is not cumulative, it could have no effect at all. If the person has already been found guilty of other offences that have a penalty of 12 months imprisonment and it is not cumulative, this could have nil effect, potentially for people who have committed a larger number of worse offences. I look forward to perhaps seeing some support from the minister or, if she cannot find a way to support the amendment, she needs to put forward something else instead. If the minister believes that the period is already cumulative, perhaps she could point out why that is. However, I think it is commonsense that the period be cumulative, otherwise the legislation will have little effect on individuals who have potentially committed a range of offences and already face suspension on other charges under the Road Traffic Act.

**The ACTING SPEAKER**: Minister.

**Mrs L.M. HARVEY**: Thank you, Mr Acting Speaker. I may need to seek your advice on procedure shortly. I understand the intention of what the member for Butler is proposing. My advisers suggest that the provision may be covered off under section 106A of the Road Traffic Act 1974. However, we need to seek further legal advice whether this amendment should be proposed here or whether it is covered off in that other section of the act. My advisers are not able to provide me with that information. I propose to the house that, if it is possible to hold this amendment and the consideration of clause 6 in abeyance, we continue on to further clauses.

**The ACTING SPEAKER (Mr M.J. Cowper)**: It is possible, minister, but we need to get from you some indication of where the amendment may be reintroduced during the consideration in detail stage—whether it be at the end or sometime in between—so that some words can be drafted around the proposal.

**Mrs L.M. HARVEY**: I will get back to you in just a moment. I propose that we hold this amendment and consideration of clause 6 until we get to the consideration of clause 63. Should the amendment be inappropriately inserted at clause 6, we could have the consideration of mandatory disqualification and get advice as to whether that amendment may be required or whether it is already covered under section 106A of the Road Traffic Act.

**Mrs M.H. Roberts**: Can I ask, by way of clarification, is that clause 63 of the Road Traffic Act or is the minister talking about the Road Traffic Legislation Amendment Bill?

**Mrs L.M. Harvey**: I mean clause 63 of the amendment bill.

**The ACTING SPEAKER**: Does the minister propose that the amendment be reintroduced before clause 63 or after clause 63?

**Mrs L.M. Harvey**: I propose it be reintroduced immediately after clause 63.

**The ACTING SPEAKER**: Members, if you would not mind being patient whilst some words are prepared, then we will proceed, following the agreement of the chamber.

**Clause 6 postponed until after consideration of clause 63, on motion by Mrs L.M. Harvey (Minister for Road Safety).**

**Clause 7: Section 64A amended —**

**Mrs M.H. ROBERTS**: Clause 7 amends section 64A of the Road Traffic Act. The explanatory memorandum refers to the Road Traffic Legislation Amendment Act 2012, which amended section 64A of the Road Traffic Act 1974. It states —

> Prior to being amended by the *Road Traffic Legislation Amendment Act 2012* section 64A provided that a person who does not hold a drivers licence, because the licence had been cancelled under section 75(2a) or (2b) of the RTA, and who drives with a blood alcohol content of 0.02g of alcohol per 100ml of blood or above, commits an offence.
>
> The *Road Traffic Legislation Amendment Act 2012* repealed section 75(2a) and (2b) of the RTA and the provision was replicated at section 22 of the *Road Traffic (Authorisation to Drive) Act 2008*. Because of this, a consequential amendment was made to section 64A and reference to section 75(2a) or (2b) of the RTA was replaced with section 22(1) or (2) of the *Road Traffic (Authorisation to Drive) Act 2008*. It has since been realised that the amendment to section 64A should not have removed reference to the repealed section.

> Reference to the repealed section 75 is needed so that drivers whose licence was cancelled under the now repealed section 75 will continue to be liable for the penalty under section 64A of the RTA, if they drive with a BAC of 0.02g per 100ml of blood or more.

That, of course, gives rise to the question: is that the law now; are people who are driving with a blood alcohol content of 0.02 grams per 100 millilitres or more of blood escaping penalty and not being charged because of this slip-up? The explanatory memorandum goes on to state —

> Another minor anomaly contained in section 64A that only drivers of vehicles with Gross Combination Mass (GCM) that exceeds 22.5 tonnes are restricted to zero BAC. This is incorrect as the intent of the provision was that the zero BAC should apply to vehicles with a GCM of 22.5 tonnes or more; not only those vehicles with a GCM in excess of 22.5 tonnes.

My reading of that explanation seems to indicate that if a truck is at 22.5 tonnes, it is not currently covered. For some reason the next paragraph starts without a capital letter. I do not know whether something is missing. There is reference to persons whose driver's licence has been cancelled and how it was enforced et cetera. Perhaps we could have an explanation of what words are missing from that last paragraph about clause 7 in the explanatory memorandum.

**Mrs L.M. HARVEY**: I apologise for the line that appears to have dropped off. The third paragraph should read —

> To rectify these two matters, this clause amends section 64A of the RTA to reinsert reference to persons whose driver's licence has been cancelled under section 75(2a) or (2b) of the Act as it was in force at any time before those provisions were deleted by the *Road Traffic Legislation Amendment Act 2012* and to provide that drivers of vehicles with a GCM of 22.5 tonnes or more are subject to zero BAC.

The member is correct; those vehicles that currently sit at a GCM of 22.5 tonnes are not covered but will be covered as a result of this amendment.

**Mr J.R. QUIGLEY**: It may or may not be my error. We are discussing at the moment clause 7, which amends section 64A.

**Mrs L.M. Harvey**: Yes.

**Mr J.R. QUIGLEY**: Before that we were discussing clause 6, which amends clause 56. We were distributed a marked-up copy of the act with mark-outs, strike-outs and amendments. In the copy that was distributed —

**Mrs M.H. Roberts**: The numbering is a bit odd.

**Mr J.R. QUIGLEY**: Is that what it is? I do not know what happened to section 59 but it jumps through to part 3 of the amending legislation; it does not follow in numerical order. I am sorry.

**Mrs M.H. ROBERTS**: I make the point that we have been working through this legislation. I think this clause serves to illustrate that when legislation comes before the house, particularly amending legislation of the Road Traffic Act, no single part necessarily stands by itself; it relates to other clauses and other parts of the legislation. Unfortunately, it is unnecessarily complicated and that means we have anomalies here, whether it is what was intended for the GCM when this act was last amended or whether it is that when the Road Traffic Legislation Act 2012 repealed those sections, a further section was not replicated that needed to be replicated. It makes the case in point that we have been making on earlier clauses of the bill.

**Clause put and passed.**

**Clause 8: Section 65 amended —**

**Mrs M.H. ROBERTS**: This clause amends section 65 of the Road Traffic Act. I can see where the confusion comes from what the member for Butler was expressing before because the sections of the Road Traffic Act that are being amended in this amendment bill are not being dealt with in the same order as they are in the Road Traffic Act, so they jump around a little. Here we are dealing with section 65 being amended, but section 12 is amended under division 2 and I think section 23 and others are amended under division 3.

For the moment, in clause 8 we are dealing with section 65, which provides definitions for the terms of breath, blood and oral fluid testing. The explanatory memorandum notes —

> Currently the terms only apply to Part V Division 2 and section 59B(5) of the Act. Several offences containing elements of alcohol or drug presence or intoxication sit outside Division 2. This includes elements of 'Dangerous driving causing death or grievous bodily harm at section 59,' 'Dangerous driving causing bodily harm' at section 59A and the new offence of 'Providing driving instruction: blood alcohol content' inserted by clause 44.

As members will know, as we discussed in the second reading stage, after this legislation is passed, those supervising drivers will be required to have a zero blood alcohol content, which provision is long overdue. The former Road Safety Council and the Office of Road Safety have been recommending this for a period exceeding 10 years. I note that the explanatory memorandum states —

> This clause expands the coverage of the definitions in section 65 to include all offences with elements of alcohol or drug presence or intoxication, from sections 59 to 73 inclusive.

This is something that the opposition strongly supports. The explanatory memorandum states, further on —

> Section 72(3) authorises the chief executive officer of the Chemistry Centre (WA) to certify persons to perform particular roles in the enforcement of alcohol and drug related offences under the RTA.

That is an area on which I would like some clarity. When it states that the chief executive officer of the Chemistry Centre authorises people, does it mean that he can authorise people who work for the Chemistry Centre, independent medical practitioners or police officers? Can he authorise people in a private organisation, effectively outsourcing the task? Those are the questions that arise about section 72(3). The explanatory memorandum continues —

> Section 72(3)(c) authorises the chief executive officer to certify a person as being competent to operate breath analysing equipment.

Presumably, this refers to police officers, but could that task be given to unsworn employees of Western Australia Police or, again, is that a task that could be outsourced to a private contractor? The memorandum continues —

> This clause also amends the definition of 'authorised person', 'breath analysing equipment' and 'preliminary test' …

I am about to run out of time in this five minutes, so I will wait for the answer to those earlier questions, but I will just signal here that I have some questions about the blood test analysis.

**Mrs L.M. HARVEY**: It is a very technical bill. Currently under the legislation the chief executive officer of the Chemistry Centre is the authorised person who can certify people as being competent to operate all types of breath analysing equipment. We are changing that with this amendment to be the Commissioner of Police, because he runs the programs to train and test police officers in the use of the equipment. It makes more sense to have the Commissioner of Police, or whomever he might delegate that authority to, as the authorised person to certify police officers as being competent to operate the breath analysing equipment.

**Mrs M.H. ROBERTS**: Dealing with just those elements of the question, the minister has just said that a police officer can determine who those authorised persons would be. I asked whether those authorised persons would necessarily be sworn police officers. Could they be unsworn employees of Western Australia Police, or could they be private contractors?

**Mrs L.M. HARVEY**: An authorised person can be any person whom the Commissioner of Police authorises and certifies as being competent to operate breath analysing equipment. At the present time, all those authorised persons are police officers, and there is no proposal to change that practice.

**Mrs M.H. ROBERTS**: I well understand that the current situation is that those authorised persons are police officers, and I well understand that the minister has advised the house that there is currently no intention by the Commissioner of Police or the government to authorise persons other than sworn police officers. However, the minister's answer would seem to indicate that the Commissioner of Police would be at liberty to appoint any person he wanted to authorise to fill that role in the future—not that he wants to, not that he is going to, just that this law would permit it. I seek the minister's advice about whether that is permitted only because of these amendments, or whether it is permitted under the existing Road Traffic Act.

**Mrs L.M. HARVEY**: That is permitted under the existing act by the chief executive officer of the Chemistry Centre. However, as I said, the Commissioner of Police trains police officers to use this equipment, so we are proposing to change that person to the Commissioner of Police.

**Mrs M.H. ROBERTS**: The testing regime in place in Western Australia is different from that of other jurisdictions. In determining a reading for blood alcohol level, effectively a time count-back applies that does not apply in other states. Can the minister advise how WA Police calculate that blood alcohol level, and how that compares with other jurisdictions?

**Mrs L.M. HARVEY**: The method that police use is basically a count-back method that goes to the time that the last drink was taken, as stated by the person. It is covered under section 71 of the Road Traffic Act. A person's blood alcohol level increases by 0.016 per cent each hour for two hours after taking a drink, and then declines at

the same rate—0.016 per cent each hour afterwards. The calculation is based on when the person's last drink is said to have been taken, and is calculated back to the time that the breath test was taken.

**Mrs M.H. ROBERTS**: I note that that is covered under section 71, "Blood alcohol content at material time, how calculated", and I note that it has been subject to considerable criticism over the years. Is the minister proposing to make any changes to section 71 of the act? How many other states of Australia still use this calculation method?

**Mrs L.M. HARVEY**: I have the Road Safety Commission and the police working on what is commonly referred to as blow-as-you-go legislation, because we are currently the only state in Australia that uses this back-calculation method. I think we can simplify matters quite significantly for police officers if we move to a regime similar to that of other states. Those amendments do not form part of this amending legislation, but they are certainly being worked on at present.

**Ms M.M. QUIRK**: This clause, and the ones that follow, dealing with sections 59 to 73, refer to alcohol and drug testing as separate functions. In terms of testing, was any consideration given to the situation in which a driver has a combination of drugs and alcohol in their system?

**Mrs L.M. HARVEY**: There is an aggravated offence in Victoria, as I understand it, for persons who have alcohol and drugs in their system. That is one of the areas on which the Road Safety Commissioner is also working with police at present as part of the blow-as-you-go package.

**Ms M.M. QUIRK**: Can the minister tell me the optimal number of drug tests a year that police want to work towards, and how that compares with road safety expert Max Cameron's statement that the ideal figure is that 90 000 tests a year be administered?

**Mrs L.M. HARVEY**: I do not have those exact figures on me. With respect to Mr Cameron's figure, sometimes Mr Cameron's advice differs somewhat from the advice I receive from other sources. He is not currently an adviser to the government on these matters. What I can say, though, is that I did authorise police to significantly expand their roadside drug testing capacity with some funds from the road trauma trust account. As to the quantum of those tests, I think it sits at around 19 000 tests that we were currently conducting, when previously police were funded to conduct about 8 000 tests. I would need to provide the exact figures to the member at another time.

**Ms M.M. QUIRK**: Minister, I understand that a few years ago—probably four or five years ago—there was a statutory review of drug-driving legislation. I understand that another review is being conducted into drug-driving legislation. What is the rationale for that review, where is that review at and when does the minister expect that review to be completed?

**Mrs L.M. HARVEY**: Member, I am not aware of a statutory review of that legislation occurring at present.

**Ms M.M. Quirk**: By way of interjection, I did not say that was a statutory review. There has been a statutory review. I understand that the Road Safety Commissioner is doing a review into drug-driving legislation.

**Mrs L.M. HARVEY**: As I said previously, we are looking at blow-as-you-go legislation and at that aggravated drug and drink-driving offence that currently sits in Victoria. That may be what the member is referring to. As to a review, a "review" to me indicates a thorough and comprehensive assessment of all of the legislation that might link to drug-driving, and that is not currently being undertaken.

**Ms M.M. QUIRK**: I think last year the minister responded to a report of the Community Development and Justice Standing Committee on traffic enforcement. One of the recommendations in that report was that the Minister for Police introduce amendments to the Road Traffic Act to establish an offence for the combined use of alcohol and illicit drugs, and provide for drug-driving offences to attract the same penalty as drink-driving. The minister's response was that in 2015–16, the Road Safety Commissioner will be conducting a review into drug-driving legislation, in conjunction with WA Police and other key stakeholders. I seek some clarification of that response from the minister.

**Mrs L.M. HARVEY**: As I said, the comments to which the member is referring are basically what I referred to earlier, which is blow-as-you-go legislation, and looking at drug and drink-driving charges, similar to what exists in Victoria. At present, all those matters are subject to cabinet processes, because they have not been presented or approved by cabinet yet. Therefore, I am not at liberty to discuss them.

**Ms M.M. QUIRK**: I make the observation that it is not quite in cabinet yet, minister. I am asking the question. This legislation has been some time in coming before the Parliament. Given that blow-as-you-go legislation, or whatever the minister likes to call it, has obviously been under consideration for some time, and according to the minister's response it should have been concluded by June this year at the latest, I am wondering why this stuff was not incorporated in this legislation.

**Mrs L.M. HARVEY**: It was not ready for consideration in this legislation, member; it will be at a future point.

**Ms M.M. QUIRK**: While I am on this topic, I am absolutely astounded, given the state of the road toll, that the minister cannot convince her colleagues to bring in more comprehensive legislation that will cover what are obvious gaps in the legislation.

**Mrs L.M. HARVEY**: If the member looks at this legislation, she will see that this is a very comprehensive package to amend various pieces of road traffic legislation. We have also placed on the notice paper amendments for point-to-point. A significant body of work is involved in this and I have my team in the department working on the next tranche of changes, which, as I said, are subject to cabinet processes at present. We do our best with the resources we have, and we will bring that to this place in due course.

**Mrs M.H. ROBERTS**: The minister says the legislation is a very comprehensive package, which she has brought to Parliament at the earliest opportunity. Of course we know that is not true. It is not comprehensive, and it did not make its way here at the earliest opportunity. There are elements of this legislation for which we have been calling for years, and which the Road Safety Council has been seeking for years. In fact, for most of last year, we asked, "Where is this legislation?", and we were given the answer, "It will be introduced shortly; we are working on it." We were then told, "We will have it ready for the end of the year", which then came down to, "We will introduce it to Parliament before the end of the year." However, there was clearly not sufficient time for that legislation to be debated. It is now August. This bill did not get any priority in the autumn session of Parliament and just lay on the notice paper for the first session this year. It has now eventually come before the house. I have referred previously to the glacial speed of this minister. The glacial speed of this minister has cost lives on our roads in recent years.

I want to turn my attention now to the issue of blood calculation. This is not a new issue, minister. It has been around for years. I refer the minister to an article in *The West Australian* by Tayissa Barone dated 23 August 2013. The article is headed "Flaw found in breath testing". That article was written virtually two years ago to the day. The article states —

> WA's unique method of calculating blood alcohol levels favours drink-drivers and should be scrapped, research concludes.

Western Australia is the only state in Australia that uses this method of calculation, which favours drunk drivers. The article continues —

> The back-calculation process potentially reduces a drink-driver's blood alcohol level and can mean a lesser penalty.
>
> WA is the only Australian State that back-calculates blood alcohol levels from evidentiary tests.
>
> The policy is based on the premise that a driver's alcohol content will be on the rise when stopped for a roadside breath test and the evidentiary test either on a booze bus or at a police station will be higher than the actual alcohol level when driving.
>
> To account for this presumed increase, evidentiary blood alcohol levels are back-calculated to the driver's last "time of drink".

I am not going to give the minister advice here, but I am sure that you, Mr Acting Speaker, as a former police officer, could, if you wanted to, tell people what to say when they are asked when they had their last drink, if they think they are near the edge—whether to say they had a drink half an hour ago or two hours ago—because that will affect the calculation when they ultimately get to the police station.

**The ACTING SPEAKER (Mr M.J. Cowper)**: I cannot remember.

**Mrs M.H. ROBERTS**: I would be surprised about that.

The article goes on to state —

> A recent Curtin-Monash Accident Research Centre report found that of 114 drivers who recorded an illegal alcohol level at a roadside RBT, 26 were not charged with drink-driving.
>
> Among the rest, 65 drivers faced a reduced drink-driving charge …

That is, they potentially faced a .05 charge rather than a .08 charge. The article continues —

> … 11 escaped a compulsory immediate disqualification because their initial blood alcohol levels of 0.11, 0.09 and 0.08 were all back-calculated to 0.07.

A person's initial roadside test might be .11, .09 or .08, but, depending on the time a person had his last drink, all those readings can be back-calculated to .07. The article continues —

> Lead author Monash University research fellow Belinda Clark said back-calculation did not achieve its desired aim and should be axed.
>
> …
>
> Police Minister Liza Harvey said the Government would consider changing back-calculating alcohol levels if it received advice from WA Police and the Road Safety Council.

The Road Safety Council has been providing advice for years. This is a simple change. The minister alerted me to section 71 of the Road Traffic Act. The minister could quite simply axe that silly calculation method that every week lets drunk-drivers off the hook in Western Australia. Her delay on this is inexcusable.

**Ms M.M. QUIRK**: I am interested in what the member for Midland has to say.

**Mrs M.H. ROBERTS**: This is not the comprehensive bill that the minister claims it to be. It lacks key elements, obvious elements that could take drunk-drivers off the road and give them a penalty. In every other state of Australia, people have their vehicle taken from them in such circumstances, but that does not happen here. People in Western Australia have got away with a .05 offence, whereas people in every other state have had a .08 offence recorded against their name and have had to take the consequences. It is a dodgy method and a dodgy calculation. It should be ruled out and it should have been ruled out in framing a provision of the Road Traffic Legislation Amendment Bill (No.2) 2015. We have been calling for some elements for years, such as the ability to take a blood sample from someone at an accident scene when involved in a serious crash or fatality. That seems logical, and we have been waiting for that for years. We have waited years for this legislation, so it has not been fast, and it is a long way from comprehensive. Not a lot of work needs to be done on this matter. Every other state in Australia has done it. It would be a lot simpler to go for the roadside calculation rather than have the section 71 back-calculation method that advantages only drink-drivers. I call upon the minister to consider making that change. It could be made by way of amendment. It is difficult for the opposition to do it because we do not have the necessary resources. However, the minister has the resources of both the government and the police service. The minister would have the overwhelming support of the Office of Road Safety on this issue. She should draft up a simple amendment to the bill. If it is not put before this house, put it before the other house. We would happily receive the bill back here and rubberstamp that amendment. Let us not have another year go by in which dodgy breath-tests let drunk-drivers off.

**Clause put and passed.**

**Clause 9: Section 65A amended —**

**Mrs M.H. ROBERTS**: Clause 9 amends section 65A and refers to breath analysing equipment for preliminary tests. A concentration of alcohol in 210 litres of breath is to be regarded as being that number of grams per 100 milligram of blood. It refers to the coverage and definitions, including for the new offence of providing driving instruction et cetera. It covers those sections from 59 to 73 inclusive, which the opposition has said that it supports. I refer to the concentration of alcohol in 210 litres of breath regarded as the number of grams per 100 milligrams of blood. Is that a standardised calculation across Australia or does Western Australia differ in any way from the other states? Can the minister advise whether standard equipment is used in Western Australia?

**Mrs L.M. HARVEY**: I am advised that there is a standardised method of testing, and that the equipment that is used is Draeger 7110.

**Mrs M.H. ROBERTS**: Can the minister advise whether other police services use the Draeger 7110? Is that the dominant testing equipment around Australia; if not, what other equipment is utilised?

**Mrs L.M. HARVEY**: I would have to get WA Police to do a bit of research to find out exactly what is used in other states. I understand other states use the Draeger 7110 and that some states use different testing equipment. I do not have that information to hand, but if the member cares to put that question on notice, I can provide that information.

**Ms M.M. QUIRK**: In terms of the Commissioner of Police's powers to authorise people to operate the breath analysis equipment, I take it that that refers to the final test rather than the roadside test. The minister's adviser is nodding yes. More generally, quite often cadets are used on booze buses. What training or induction do they receive before going on booze buses?

**Mrs L.M. HARVEY**: I am advised that on the occasions that cadets are on booze buses, they are supervised very closely. They do not have the power to do the testing themselves. It is a training opportunity and observation.

**Ms M.M. QUIRK**: I asked that question because on the very rare occasions that I have been random breath tested in recent years, there seems to have been issues with communication. On a couple of occasions when the officers submitted instructions to me and they were not readily understood, the officer lost his temper. Having said that, I have also had a couple of experiences in which officers have been very pleasant. But there have been a couple of occasions on which the instructions have been incomplete and when I followed those incomplete instructions, the officer lost his temper. I do not think that that is good for police relations. In terms of opportunities and the rare contact that people have these days with police officers, it is a wasted opportunity if they are not cordial and sympathetic to drivers who do not readily understand their incomplete instructions.

**Clause put and passed.**

**Clause 10: Section 67 amended —**

**Mrs M.H. ROBERTS**: Clause 10 will amend section 67. Section 67 is actually big; in fact there are sections 67, 67AB, 67A, whatever. We see quite a number of amendments in the marked-up version of the bill, including consequential amendments relating to the requirement for a person to give a sample of breath for analysis, a sample of blood for analysis or a sample of urine for analysis. Could the minister walk us through what occurs when somebody is stopped at the roadside and asked to undergo a breath test? What happens if they blow over the limit? Are they conveyed to the drug bus or to a police station? What is the actual practice now? Who does all of the various tests? I have seen fairly new officers from the academy, training under supervision, taking initial blood tests. What level of officers and what authorisations do people on the booze buses have? If it is not in a booze bus situation, are motorists required to be conveyed to a police station for further testing?

**Mrs L.M. HARVEY**: Under section 66C right through to section 66F of the legislation a detailed process is prescribed about what should occur at roadside when police require a motorist to comply with a roadside breath test. It is laid out in the act—effectively they are asked to blow into the device. If they achieve a positive sample, they either go back to a station or into the booze bus, depending on what is there, to provide a secondary sample and a secondary reading. From there, police proceed to charges or infringements, as appropriate.

**Mrs M.H. ROBERTS**: There has been some criticism of the drug-testing regime in Western Australia. I have read some articles that suggest that if someone in Western Australia tests positive for alcohol, they stand little chance of being tested for drugs, unlike practices in other states. Can the minister advise whether that is still the case; if someone tests positive to alcohol, they are not also tested for drugs, especially given there is a lot of evidence of people using a combination of drugs and alcohol? What is the current drug-testing regime?

**Mrs L.M. HARVEY**: The member is correct in that not every person who is pulled over at roadside and returns a positive breath sample that is outside the law will progress to a drug test. A motorist is required to give a roadside drug test in response to a police officer's request to comply, and police officers tend to use their discretion to determine whether it is appropriate to ask the motorist to also provide a roadside saliva sample to test for drugs. It is not automatic. Drug testing is an expensive regime and police use their discretion depending on the behaviour of the people at roadside and other evidence around what it is they find when they pull over motorists.

**Mrs M.H. ROBERTS**: The minister advised that it is at the discretion of police officers to determine whether they will ask the offending driver who has perhaps blown positively to an alcohol test to progress to a drug test. Given that every police car is a so-called booze bus, because they are equipped to perform alcohol tests, do officers in police cars conducting alcohol tests have access to the drug test? In order to use discretion, do police officers have those to hand?

**Mrs L.M. HARVEY**: No. Not every police vehicle will carry drug-testing equipment. The reason is that the swab sticks need to be kept at a stable temperature; they need a cool environment. They are not conducive to being carted around in every police vehicle. That said, police officers can always request and require someone to accompany them to perform a drug test if required. In addition to that, booze buses obviously have that capacity.

**Mrs M.H. ROBERTS**: I have one last question on that point. The minister said that not every vehicle is equipped for police to take drug tests. Did the minister mean only the booze buses have that facility; and, if not, what quantum of vehicles would provide police with access to drug-testing equipment?

**Mrs L.M. HARVEY**: It is not only the booze buses that are equipped to perform roadside drug tests; other vehicles will be deployed for specific operations, for example, and drug-testing equipment will be available to police. As to the number of vehicles that would be in the fleet with drug-testing equipment on any given day, I would need the member to put that question on notice because I do not have that information to hand.

**Mrs M.H. Roberts**: Approximately—are we talking about 10 per cent or 50 per cent of the fleet?

**Mrs L.M. HARVEY**: I am reluctant to put any figure forward without knowing for certain because I would not like to be accused of misleading Parliament. If the member gives me the opportunity to provide a comprehensive answer by placing the question on notice, I will provide it.

**Mrs M.H. ROBERTS**: I asked the minister a question that I thought she would reasonably know the answer to. This is the second time the minister has told me to place a question on notice. We are dealing with some legislation. The minister has proposed amendments on the notice paper. The third reading cannot be at any stage before tomorrow. Surely the minister could provide me with that information at the third reading rather than being unaccountable in this place—the Parliament of Western Australia.

**The ACTING SPEAKER**: Member for Girrawheen.

**Ms M.M. QUIRK**: Sorry; was the minister getting some advice? I will wait until that is finished.

**Mrs L.M. Harvey**: You have the call, member; I am listening to you.

**Ms M.M. QUIRK**: Thank you. It was just that one of the minister's advisers was talking to her.

**Mrs L.M. Harvey**: You hadn't started speaking.

**The ACTING SPEAKER (Ms J.M. Freeman)**: Members, through the Chair.

**Ms M.M. QUIRK**: I have two issues. Can the minister confirm that people are not drug tested; that is, if people do not return a positive preliminary breath test for alcohol but the officer thinks that they were in some way behaving or driving erratically, they may, at the discretion of the officer, be submitted to a drug test? Is the minister's adviser saying yes?

**Mrs L.M. Harvey**: To a blood test?

**Ms M.M. QUIRK**: No; to a drug test.

**Mrs L.M. HARVEY**: There are different ways that this could happen. For instance, if somebody is pulled over by a booze bus and they blow zero in an alcohol test, the drug-testing equipment is available at the roadside; and if the officers perceive that the person's behaviour is consistent with being under the influence of drugs, they would then triage them to have a roadside blood test. Under section 66, if a person blows zero in an alcohol test at the roadside but their behaviour is consistent with being under the influence of other drugs, they can then be required by the police officer to accompany them to have a blood test for illicit substances. There are different mechanisms depending on the circumstances.

**Ms M.M. QUIRK**: I am a bit puzzled, given the "anytime, anywhere" message. The minister has told the member for Midland that not every patrol vehicle has these testing kits. What are they called—sticks?

**Mrs L.M. Harvey**: There is an oral swab and then there is a Dräger test that tests a saliva sample.

**Ms M.M. QUIRK**: Yes; I understand the difference. As I understand it, they need to be kept at a constant temperature and that is why not every police vehicle is equipped accordingly. Why is it not possible to have an esky in the boot of police vehicles? Surely that would overcome that issue?

**Mrs L.M. HARVEY**: I am advised that some of them do; however, not every vehicle will have that equipment. It would be vehicles that are specifically used for breath-testing and drug testing at the roadside. The testing kits are sensitive. They need to be kept at the appropriate temperature in order to work effectively. It is not a good spend of taxpayer money, in my view, to cart them around in every vehicle and potentially have that stock damaged. We want them to be used to test motorists.

**Mrs M.H. Roberts**: What do you think they do in other states?

**Mrs L.M. HARVEY**: They do it in the same way as we do.

**Mrs M.H. ROBERTS**: The minister said that she did not want to be accused of misleading the house. Other states do not do it in the same way as we do. Other states have significant drug-testing regimes. Other states have officers in patrol cars doing drug testing on a routine and regular basis. The minister really is misleading the house. We are the last state in Australia to implement this and we have the worst drug-testing regime in Australia, so for the minister to pretend otherwise is misleading the house. It may be possible that the saliva tests need to be kept at a certain temperature, but I am not aware of any advice about the other drug-testing equipment. We have a pretty weak regime. We have some tardy legislation. We are letting off drunk-drivers and drug-drivers in this state who would get prosecuted and found out in other states.

**Clause put and passed.**

**Clause 11: Section 70 amended —**

**Mrs M.H. ROBERTS**: In the minister's explanation of the amendment to section 70 of the act, she referred to clause 11(1), which amends section 70(2). That section provides for evidentiary certificates for use in proceedings. Can the minister explain to the house what those evidentiary certificates are and what information is contained in them?

**Mrs L.M. HARVEY**: With respect to the evidentiary certificates, the amendment to section 70 will change the reference to the officer signing the certificate certifying that the person who has been named was, at the material time, an authorised person. Currently, the chief executive officer of the ChemCentre WA has that authority. We are changing that reference to the Commissioner of Police. What that effectively does is detailed in section 70(2). There are a number of subsections and paragraphs. I would not want to bore Parliament by reading out every subsection, but they are basically about certifying that the person named provided a sample of breath for analysis on a date and at a stated time and so on. Those are the sorts of details that are required as evidence for a person to be successfully charged and convicted of an offence.

**Mrs M.H. ROBERTS**: I want to talk further about the evidentiary provisions the minister just mentioned in the answer she gave to my question. She has made out that this is not of much particular consequence and that we are just replacing the reference to the chief executive officer of the ChemCentre with a reference to the Commissioner of Police to make the decision and so forth. She wanted to gloss over those other subsections and not advise Parliament of what I think are some significant changes. I am looking at the changes to section 70 and I will pull out a couple at random. A change will be made to section 70(3b)(d) so that it will state "purporting to be signed by a prescribed sample taker". The words "medical practitioner or registered nurse" will be deleted. Currently, the act refers to "medical practitioner or registered nurse" in paragraphs (d) and (e) in that subsection. Paragraph (d) will state —

> purporting to be signed by a prescribed sample taker, —

The words "medical practitioner or registered nurse" will be deleted —

> certifying that an identified sample of blood was taken from a named person, on a date and at a time therein specified, in accordance with the regulations using identified sampling equipment, which was received in a described condition from an identified person; …

Currently, the blood sample needs to be signed off by a medical practitioner or registered nurse. Under this amendment, that person will just be called a "prescribed sample taker"—somebody authorised by the Commissioner of Police, who may or may not be a sworn police officer. The same change is made to paragraph (e), which states —

> purporting to be signed by a prescribed sample taker, —

Again, the words "medical practitioner or registered nurse" will be deleted —

> certifying that an identified sample of urine was provided by a named person on a date and at a time therein specified …

I do not think this is going to give many people a lot of confidence. I think that an independent person—a medical practitioner or a registered nurse—is appropriate. I understand that there are a limited number of medical practitioners and that that can be cumbersome and so forth, but surely we should at least have a registered nurse or a proper category of person. We should not just give the Commissioner of Police the ability to specify anybody he feels like as a prescribed sample taker. I do not think it is good for the police either, because there is no independence here. The police are taking the samples. If these samples are not taken by an independent person such as a medical practitioner or registered nurse, as is the current requirement, there will certainly be potential for defence lawyers to at least raise some doubt about the chain of evidence and how the evidence was taken.

I note that there is a whole lot more authority being given to the Commissioner of Police and taken away from the chief executive officer of the ChemCentre of Western Australia, and if we again look at another one of the minister's amendments at proposed section 70(2)(e), at the top of page 70 of the marked-up bill, it states —

> purporting to be signed by an analyst, certifying either or both of the following, namely, that an identified sample of blood taken from a named person was analysed for alcohol in accordance with the regulations, and the analysis result obtained from the analysis,
>
> is prima facie evidence …

And it goes on to state —

> … was the Commissioner of Police, the chief executive officer of the Chemistry Centre (WA), an authorised person, a technologist, a prescribed sample taker …

Again, this new category of prescribed sample taker is introduced and it is not just a matter of giving authority to the Commissioner of Police.

**Mrs L.M. HARVEY**: This clause basically changes the reference from the chief executive officer of the ChemCentre to the Commissioner of Police as the person who can certify that a person therein named is or was at the material time an authorised person et cetera. With respect to the prescribed sample taker that the member referred to, yes, we are changing it to also allow a broader description and that is covered in clauses 39 and 40 of the amending legislation. That will allow the option for medical practitioners, registered nurses or phlebotomists, for example, to also be authorised to take samples. As members know, police officers do not take samples of blood from people. Clause 11 also needs to be read in context with amending clauses 39 and 40.

**Ms M.M. QUIRK**: I just want to get to the bottom of the rationale for changing this. The minister explained that the reference to the CEO of the ChemCentre will now be replaced with reference to the police commissioner, but she has not told us the rationale for that.

**Mrs L.M. HARVEY**: It has changed because the Commissioner of Police is the responsible authority for running the courses that train the police officers who are required to collect this information.

**Ms M.M. QUIRK**: These certificates are issued so that when it comes to a trial or a hearing on these matters, every single person along the way who was involved in the process is not required to be there to say, "I turned on the machine" or "I took the sample from Constable Bloggs and I gave it to Constable Smith" and then Constable Smith would give evidence that he then conveyed the results to sergeant so and so. That is one of the certificates. The other one relates to calibrations of the equipment and so on. These are all about aiding evidence before the courts so that the whole system does not break down, and half a dozen police officers are not sitting around for half a day in the court. I understand the purpose of these certificates, but why can the CEO of the ChemCentre not still do that? Is it because there is a hold-up in processing samples at the ChemCentre? No? Okay; that is good. The minister's adviser is saying no. What is the rationale for doing it?

**Mrs L.M. HARVEY**: I think I have already answered that. It is the commissioner who trains the police officers who take the statements. That is why we have switched it over. It is just operationally sensible. I am told that, in effect, the commissioner is advising the CEO of the ChemCentre who has received the training and who is authorised and certified to be taking samples and using the equipment. It seems as though it is somewhat of a pointless exercise if the commissioner is providing the training and training the officers. The commissioner should be the person to then also certify that the officers are suitable people authorised under the act. As the member is aware, the Joondalup Western Australia Police Academy is a registered training organisation with the ability to certify people. It is just logical.

**Ms M.M. QUIRK**: I have some issues with that but I will not waste time. The minister looks like she is getting some further advice.

**Mrs L.M. Harvey**: I can listen to you over and above what Mr Matthiessen is saying.

**Ms M.M. QUIRK**: All right. Given that someone who is not independent will be certifying, for example, that the equipment is functioning and that it has been tested at regular intervals and so on, I just want to ask the question and the minister may well need to give us the advice tomorrow, but how often are the machines for testing blood alcohol content tested? How often are they calibrated and is there any independent oversight by anyone of that testing?

**Mrs L.M. HARVEY**: The testing of the alcohol testing equipment is done annually through a national standard. The process is a nationally standardised process.

**Ms M.M. QUIRK**: How does the police commissioner inform himself of the results of the testing so that he can certify with any degree of confidence that testing has been conducted and the individual machines comply?

**Mrs L.M. HARVEY**: When a machine goes for testing, a report comes back to certify that the machine has been tested and whether it is compliant, whether it is sealed, whether it is appropriate to continue to be used, whether it is fit for purpose or other such matters. Obviously, the commissioner or his delegate then needs to take action should the machine be substandard.

**Mr J.R. QUIGLEY**: The minister said that proposed section 70 introduces the concept of a prescribed sample taker. By what process is a person prescribed as a sample taker? By what qualification is that person selected and where will this prescription be located? In other words, how do we know who is prescribed? Is this by *Government Gazette* or under the hand of the commissioner?

**Mrs L.M. HARVEY**: I am not sure whether we should deal with this now or more appropriately at clause 33, but clause 33 amends section 65 by adding the new definition of "prescribed sample taker" and provides that regulations may prescribe other appropriately qualified classes of persons, such as phlebotomists, to be prescribed for this purpose. The short answer is: the regulations will prescribe the appropriate sample takers with respect to that definition.

**Mrs M.H. ROBERTS**: This takes me back to the point I raised in the first instance on this bill about the prescribed sample takers. The minister asks whether we should really discuss this provision now or at clause 33. The minister has introduced this concept at clause 11 of the bill. That is the first place it is used. I have read through clause 33; it inspires me with no confidence whatsoever. The moment that we tick off on clause 11, we tick off on these changes to section 70 of the Road Traffic Act. The minister says that this clause will simply allow medical practitioners, nurses and phlebotomists or the like to take samples. The Road Traffic Act allows medical practitioners and nurses to take samples. The minister is now introducing a new category. Obviously, phlebotomists should be able to be accredited to take blood samples; that just stands to reason. However, who will these other prescribed persons be? Why should the provision be open-ended? It seems to me that these are matters of convenience to the police service. I do not think that the minister has independently scrutinised the legislation that the police service put in front of her. It will tell the minister what is convenient and cheap, but she has a job to protect the public interest. She has a job to ask whether the provisions are appropriate. Should the Commissioner of Police have the virtually unfettered power to list who can take a blood sample, for example? Yes, if broader categories than a medical practitioner or registered nurse are wanted, they can be specified in the bill. Do not hide them in the regulations. Do not give us this new dodgy title of a "prescribed sample taker". It might be cheap and it might be convenient, but I do not think that it is the best outcome here. I have not yet referred to this clause; proposed section 70(3a)(a) on page 70 of the marked-up bill states —

> the taking of a sample of blood from the person by a prescribed sample taker —

The words "medical practitioner or registered nurse" are crossed out —

> if taken within 4 hours, or 12 hours if the sample was taken under section 66(8B), —

The reference to "4 hours" is crossed out again —

> after the driving, attempted driving, use or management of a motor vehicle that gave rise to the alleged offence; and

Et cetera. The minister's dodgy explanations kind of confuse the whole issue by saying, "Look over here at some other training and testing." The breathalysing equipment and so forth that is annually checked and certified, and the equipment that police officers regularly use to take breath samples in kerbside testing, on the booze bus and at the station if someone is conveyed back to the station are all appropriate pieces of equipment for police officers to be trained in the use of and use. But we are not talking about that. We are talking about prescribed sample takers. We are asking why the Commissioner of Police should determine them. Why should it be hidden in the regulations? At the moment, people have the right to have a medical practitioner or a nurse take the sample. The minister can expand it and put the words "or phlebotomist" in the legislation if she wants to, or "or phlebotomist or other appropriately trained medical person". It is not covered under clause 33. I do not want that answer again, minister, because I have looked at clause 33 and it does not satisfy this provision. It is one of the minister's usual tricks of saying, "Look over here; there's another clause—clause 33. It'll all be sorted out then." However, in the meantime, we will have signed off on these words "prescribed sample taker". I am not talking about engineering here; I am talking about medical practice. I am sure that the Police Academy does not train people in medical practice.

**Mrs L.M. HARVEY**: First of all, the Road Traffic Act is owned by the Road Safety Commission, so if the commissioner wants to change anything within the act, the changes need to have the concurrence of the Road Safety Commission.

Several members interjected.

**The ACTING SPEAKER**: Members!

**Mrs L.M. HARVEY**: If the commissioner made amendments that were unsatisfactory and not in the interests of road safety, the Road Safety Commission would likely have something to say about it. The commissioner does not determine who a prescribed sample taker is; the Parliament does so by allowing prescribed sample takers to be listed in the regulations that are tabled in Parliament. The Parliament then has the ability to disallow those regulations if it is deemed that the people listed as part of that are inappropriate as prescribed sample takers. All this provision does is create an opportunity. Should there be another class of health practitioner, such as a phlebotomist, who has the capacity and ability to take a blood or urine sample from a person from whom we need a sample—other than a medical practitioner or a registered nurse, which are currently in the act—we can

add that person to the list of appropriate prescribed sample takers by way of the regulations. That is what this provision does. I do not think it is a dodgy amendment at all.

**Mr R.F. JOHNSON**: I have listened very carefully to the debate and what the member for Midland has said. The more the minister tries to explain away the detail of this bill, the more I get concerned. I agree with the member for Midland; I do not think it is appropriate for the Commissioner of Police, or any police officer for that matter—I support the police enormously—to have the power to determine who will be prescribed sample takers.

**Mrs L.M. Harvey**: He doesn't.

**Mr R.F. JOHNSON**: That is what it says in here.

**Mrs L.M. Harvey**: The regulations do.

**Mr R.F. JOHNSON**: We have not seen the regulations.

**The ACTING SPEAKER**: Members! Through the Chair.

**Mr R.F. JOHNSON**: We have not seen the regulations at all, Madam Acting Speaker. They are in airy-fairy land. It also concerns me that the minister is now saying that the Road Safety Commissioner has the power to change things and if the Road Safety Commission does not like it, it can do something about it. Can the minister tell me how? The Road Safety Commissioner has no legislative power whatsoever. He is merely, if members like, the chief executive officer with a posh title who is in charge of the Road Safety Commission. It used to be the Office of Road Safety. The minister has now abolished the Road Safety Council, which had an independent chairperson who could say things that were right and that the public wanted to hear. The Road Safety Commissioner in the office of the Road Safety Commission now reports only to the minister; he does not even report to Parliament. How can anybody have any confidence in this legislation and what the minister has put before Parliament today? I have serious concerns about the power the minister is personally giving the Road Safety Commissioner and the Road Safety Commission. It has no legislative power whatsoever. The minister said that this legislation belongs to them. I cannot see how it belongs to them. They might be the carriers of this legislation—they might be the people who gathered it together—but the legislation was basically done by the police and, to a great extent, the Department of Transport. They put this legislation together, not the Road Safety Commission. How many draftspeople are there in the Road Safety Commission? How many experts are there in the Road Safety Commission? Staff there report to the Road Safety Commissioner and the Road Safety Commissioner has no legislative power whatsoever. He does whatever the minister wants him to do and he will say whatever she wants him to say. I have very little confidence in clause 11, particularly when we are talking about people's bodies being invaded by injections and drawing out blood samples and so on, if it is not done by a doctor or a nurse—a qualified person—as it has been in the past. I have some serious concerns and I would like the minister to answer them.

**Mrs L.M. HARVEY**: The only concerns I heard were that the member seriously doubts whether the commissioner is the appropriate person to be involved in determining who a prescribed sample taker should be, or the Road Safety Commission. In fact, listing them as part of the regulations is probably an appropriate test to ensure that only the appropriate people are prescribed to take blood and urine samples. I am not quite sure what the member's question was. It sounded more like a statement, but I think the member wanted me to answer something.

**Mr R.F. Johnson**: It was a bit of both, actually. I have serious concerns about the power that the minister will personally give the Road Safety Commissioner—which is basically only a title—who has no legislative powers whatsoever, and the Road Safety Commission, which used to be the Office of Road Safety. The minister never had experts there; there were people who did a lot of analysis and research, and they reported through Iain Cameron, who is probably best known in this state —

**Mrs L.M. HARVEY**: So there is still no question; I will sit down.

**Mr R.F. Johnson**: You wanted me to answer.

**Mrs M.H. ROBERTS**: Does the Road Safety Commissioner operate independently of the minister or is he answerable to the minister and under her direction?

**Mrs L.M. HARVEY**: He is answerable to me, as is appropriate in a Westminster system.

**Mrs M.H. ROBERTS**: I would like to make another point about clause 11, but I note that the minister has at long last proved the point that was being made by the member for Hillarys—that we cannot pretend that the Road Safety Commissioner will make any independent decisions on these matters when he is subject to the direction of the Minister for Police; Road Safety. The minister cannot have it both ways. She cannot say that this independent person is deciding it, not the government. When he is subject to direction by the minister, it

basically means it is a decision of the government. The minister has also referred to the regulations, saying that the regulations go before Parliament. Thousands of regulations go before Parliament all the time. Members on this side of the house have no chance of stopping regulations that the government is trying to put in place. The opposition in this house, on the Labor side of politics, when we have the gerrymander in the Legislative Council, is never in a position to block any regulations. It is just a nonsense to suggest that it is somehow independent.

I have suggested to the minister what would be the most up-front and honest way of doing this, and how she could put in place the safeguard we have been seeking. I see the minister shake her head, but we are seeking a simple safeguard here—to have someone who is medically qualified. The minister has referred me to clause 33, which she says covers this definition of "prescribed sample taker". For the record, clause 33 states —

> **Section 65 amended**
>
> In section 65 insert in alphabetical order:
>
> ***prescribed sample taker*** means —
>
> (a) a medical practitioner or registered nurse; or
>
> (b) a person prescribed for the purposes of the provision in which the term is used;

That is a very wide definition. If the minister wants to satisfy our concerns—if all she wants to do is to include phlebotomists and other medically qualified and trained persons—why does she not modify paragraph (b) so that instead of referring to "a person", it refers to "a medically qualified person"? If she wanted to, she could make it read "a phlebotomist or other appropriately medically qualified person" or whatever words are used in other pieces of legislation. I am pretty confident that there are some broader terms in other pieces of legislation that are not as broad as "prescribed sample taker"—for example, in legislation that deals with the taking of DNA samples. I think that legislation includes a broader term relating to somebody who is medically qualified. I do not recall the term off the top of my head, but there will be situations in which a medical practitioner or registered nurse either is not available or is not the most desirable person. Maybe some other categories should be listed, such as phlebotomists.

Let us put some little piece of constraint in place, so that Parliament can have some confidence, and we do not have to ferret around looking through the regulations every time a new regulation is put through this place. Either the minister agrees or disagrees with the principle that a person taking one of these samples should have some form of medical qualification. It should not just be a matter of someone who is prescribed by a regulation that the government has placed before both houses, hoping that no-one raises the issue. Even if someone does that, it does not matter because the government has the numbers.

I know the minister has only ever been in government, but she cannot just keep taking this bullying attitude to every clause of the bill, and this bullying attitude to legislation. Legislation is improved by a discussion like this. This is what the Westminster system is about; it is about raising genuine concerns, and this is a genuine concern. I think thousands of people in Western Australia would be concerned about this. They do not want the Commissioner of Police or, even worse, the Road Safety Commissioner, who is, as the minister said, completely at her direction, determining what these things are. We have this bill before the house so that we can make that determination.

**Mr R.F. JOHNSON**: I would like to add briefly to what the member for Midland has said. I have serious concerns about who is going to start invading people's bodies. Nobody in this place would be tougher on drink-drivers and drug-drivers than I would be, but I would not want anyone's body invaded by someone appointed under regulations by the Road Safety Commissioner, the Commissioner of Police or whoever, as an official sample taker. As far as I am aware, even chemists may not be allowed to take samples from a vein. They are allowed to give the influenza vaccine injections and things like that, which do not have to go into a vein, but I do not know whether they have the qualifications. I think they often have to have a nurse on duty even to do that. The loose term of "sample taker" for somebody who would almost certainly be in hospital, where nurses and doctors are available, needs to be tightened up far more than has been done. I think it is very lax, and I think the public would not appreciate such an airy-fairy description for people who are going to invade their bodies. I really do not think that is appropriate. The minister should take that on board, and amend the legislation to lay out quite clearly who has the medical qualifications to be able to take samples of blood, because that is what we are talking about, from people who are almost certainly lying in hospital beds.

**Mrs M.H. ROBERTS**: Will the minister consider making a change at clause 33 about what a prescribed sample taker is; and, if not, why not? Can she explain to the house why a sample taker should not be a medically qualified person?

**Mrs L.M. HARVEY**: As I said, we can have that discussion at clause 33. I am satisfied that prescribed sample takers can actually be prescribed by way of regulation appropriately. I do not believe that any minister of the

Crown will certify an inappropriate person by way of regulations to take blood samples from people for the purposes of alcohol and blood testing. Perhaps the member has experience of different regimes that might do that. Currently, clause 33 details a medical practitioner, a registered nurse or another qualified person, who would very likely be a phlebotomist or potentially some other characterisation of a medical professional. I am satisfied that having this prescribed and detailed in the regulations is sufficient protection for individuals who are required to provide blood samples, because they have presented as being over the limit for alcohol or drugs in their system while driving.

**Mrs M.H. ROBERTS**: The minister has referred to the prescribed sample taker as being a blood sample taker. Can the minister advise the house what other bodily fluids, if any, a prescribed sample taker will be able to take?

**Mrs L.M. HARVEY**: They would be able to take a urine sample. For the purposes of this provision, it is a sample of blood from a person, taken by a prescribed sample taker. That is what we are talking about with this clause, so that would be a sample of blood taken, I would presume, by way of a syringe.

**Mrs M.H. ROBERTS**: Section 70 makes reference to urine and other things. Therefore, I do not know why the minister is giving us a misleading answer.

**Mrs L.M. HARVEY**: A person who is able to authorise drug testing means a person who is authorised by the Commissioner for Police to collect, and conduct drug testing of, samples of oral fluid for the purposes of section 66D—therefore, yes, potentially a buccal swab, a blood test or a urine test.

**Dr A.D. BUTI**: In one of the minister's answers to, I think, the member for Hillarys, or the member for Midland, the minister said there might be some other systems or methods. I am wondering how this equates to the taking of samples for doping offences in sport. Under the Australian Sports Anti-Doping Authority Act, the test is required to be conducted by an official from the Australian Sports Anti-Doping Authority. Unless I am not reading this bill correctly, the words "prescribed sample taker" are pretty open-ended. Can the minister assure us that the role of prescribed sample taker will not be contracted out to a private identity or organisation? Who can and cannot be a prescribed sample taker? The minister said that can be done by regulation. Why is the minister not prescribing in the bill who can be a prescribed sample taker? Surely that is an incredibly important role, because that evidence can be used against a person. Surely it is important to have strict rules for who can be a prescribed sample taker.

**Mrs L.M. HARVEY**: Whoever is taking the sample obviously needs to be qualified to perform that procedure.

**Dr A.D. Buti**: Qualified in what way—what do you mean?

**Mrs L.M. HARVEY**: I refer the member to clause 33. This is why I wish members opposite had availed themselves of the opportunity to have a briefing, because we could have explained this in more detail. Clause 33 prescribes a medical practitioner, a registered nurse or another person suitably qualified.

**Dr A.D. Buti**: That is what I am saying. What does that mean?

**Mrs L.M. HARVEY**: That will be prescribed in the regulations.

**Dr A.D. Buti**: Exactly. That is the problem.

**Mrs L.M. HARVEY**: At this point in time, we anticipate that that will likely include phlebotomists. Potentially, it could be another category of medical professional that is prescribed in the regulations. I have answered that a number of times. I think fundamentally the member disagrees with having the prescribed sample takers listed as part of a regulatory mechanism.

**Dr A.D. Buti**: Yes—exactly.

**Mrs L.M. HARVEY**: I am satisfied that that is an appropriate course of action.

**Clause put and passed.**

**Clause 12: Section 72 amended —**

**Mrs M.H. ROBERTS**: Section 72 provides the head of power for the making of regulations relating to testing for alcohol and drugs. The advice here is that the minister needs to broaden the powers provided under section 72. Can the minister explain why these powers need to be broadened and made more comprehensive?

**Mrs L.M. HARVEY**: The reason that the head of power needs to be broadened is that the head of power currently relates only to part 4, division 2, and section 59B(5) of the principal act. There are several other elements of dangerous driving causing death or grievous bodily harm at section 59; dangerous driving causing bodily harm at section 59A; and the new offence of "providing driving instruction: blood alcohol content" inserted by clause 44. This clause expands coverage of the head of power to include all the offences with elements of drug or alcohol intoxication from sections 59 to 73 inclusive.

**Mrs M.H. ROBERTS**: Clause 12(2) seeks to amend section 72(2), which empowers the minister responsible for the administration of the Road Traffic Act to approve the types of apparatus to be used et cetera. It states that enforcement of these offences is the responsibility of the Commissioner of Police. This clause seeks to amend clause 72 to basically put the Minister for Police, or the minister responsible for the Police Act 1892, in place of the minister responsible for the administration of the Road Traffic Act. This is a major deviation from the provisions of the Road Traffic Act. Previously, when changes were made to the Road Traffic Act, the general view was that the legislation is more appropriately placed under the transport portfolio. This amendment seems to me to be putting it back under the police portfolio and the Minister for Police. I would like the minister to make the case to Parliament as to why it is appropriate that the Minister for Police should sign off on these things rather than the minister responsible for the Road Traffic Act.

**Mrs L.M. HARVEY**: This changed with the splitting of the Road Traffic Act. Currently, the Minister for Road Safety is the authoriser and certifier of the equipment. This is basically changing that to be the Minister for Police, because it is the Minister for Police, and then the Commissioner of Police and police officers who use the equipment. It is just an administrative change.

**Mrs M.H. ROBERTS**: I feel that I may not have made myself clear, minister. Previously, there have been Ministers for Transport; Road Safety. Ministers for Transport have been responsible for the Road Traffic Act in this state. Eric Charlton was responsible for the Road Traffic Act in this state. In other states of Australia, the road safety portfolio is separate from the police portfolio. The minister is obviously handling both police and road safety. I know that it is generally the preference of the police force that road safety comes under the police jurisdiction. However, over the last 20 years, a lot of road safety experts have put forward the proposition that the administration of road safety should be held separately from the police department and the police portfolio. There are some very coherent arguments around that—for example, that the people who are basically doing the enforcing should not necessarily be the people who make the rules and there should be some separation. I am concerned that a future administration may choose—just as the former Court government did—to allocate the road safety portfolio to the Minister for Transport. That is the case in numerous other states in Australia. I do not see why a future government should not be able to make that determination.

What the minister is doing by making this change is complicating matters. There is no issue here for a person like the minister, because as both Minister for Police and Minister for Road Safety, she is wearing the road safety hat. However, there is potentially an issue if the portfolios are separate, because the Minister for Transport might be responsible for the Road Traffic Act, and it is appropriate that that minister be the minister who makes the call here. The minister has given some explanation for this change. It is a change that fits the current status quo and the current regime. However, I am concerned that because of this change, we will see yet another amendment in this place in a few years' time when a new regime reallocates the portfolios. Ideally, legislation should not be made on that basis.

**Mrs L.M. HARVEY**: As I said, member, this is mostly an administrative amendment. Currently the police do the selection and testing of new equipment, such as apparatus for breath testing a person's alcohol concentration limit et cetera. The police would formerly make that application to the Minister for Transport but when the acts were pulled apart, an application was made to the Minister for Road Safety to give approval for that equipment to be used for the testing of individuals, breath samples et cetera. All this means is that the Minister for Police will authorise and approve the equipment that the police use for the purposes of testing for alcohol. It is administrative.

**Mrs M.H. ROBERTS**: The minister advised me in her previous answer that it is administrative. I am absolutely aware that it is administrative, so she will not need to say so in her next answer. What I am saying is that it could be administratively cumbersome and administratively not desirable and it may not stand the test of time because different governments make different portfolio allocations. There are examples of that in Western Australia and around Australia. Perhaps this is something that is more appropriately dealt with in regulations so that if there is a different allocation of portfolios, the provision that applies to the minister it sits with could be put in regulations. Perhaps the minister would like to give me some advice about whether she is prepared to consider that; and, if not, why not?

**Mrs L.M. HARVEY**: The amending clause is here because previously the Road Traffic Act was shared across portfolios. We have pulled apart pieces of legislation and in doing that there have been administrative changes. This is an administrative change. I understand what the member is saying; namely, if there is a change of government or a change of government policy, different sections of the Road Traffic Act and the Road Traffic (Authorisation to Drive) Act 2008 et cetera may be merged and come under one big portfolio as it was previously. However, it is how it is now. I am effectively asking Parliament to approve this clause to allow the Minister for Police to be the minister who approves an apparatus that the police use in their activities in conducting breath tests by way of publishing it in the *Government Gazette*. I hear what the member is saying, but

this administrative change is a sensible one in the context of the responsible person for the approval of police equipment.

**Clause put and passed.**

**Clause 13 put and passed.**

**Clause 14: Section 12 amended —**

**Mrs M.H. ROBERTS**: Clause 14 will amend section 12 and will make a minor change to the definition of "incident information". Can the minister advise the house why that change is required?

**Mrs L.M. HARVEY**: This clause expands the scope of the definition of an "incident" to also include copies of statements or reports produced as a result of an investigation into an incident. It is the same definition that is used in proposed section 13D for the disclosure of incident information to the Insurance Commission of WA, which is to be inserted by clause 15.

**Mrs M.H. ROBERTS**: Further to that, what is the rationale behind this change? Why has this come about? Have there been issues in which the incident information has been insufficient? Why is this expanded definition required? Are there examples of concerns in which the current definition has proved inadequate?

**Mrs L.M. HARVEY**: The clause 14 amendment needs to be taken in the context of amending clause 15, which goes to the RTA section 56 and imposes a duty on the driver of a vehicle that is involved in an incident that occasions bodily harm or damages property to report the incident forthwith to the officer in charge of a police station. The explanatory memorandum refers to what clause 15 proposes, and reads —

> The purpose of requiring these details is to enable the Western Australia Police to determine whether an investigation, into an alleged offence against the RTA, ought to be pursued.
>
> Where an incident occurs and, as a consequence, a police officer attends the scene of the incident, the member takes details from the driver or drivers involved. The officer may also take a statement. In such a case, the driver or drivers involved in the incident are considered to have complied with the requirements imposed under section 56.

We need a reference to the statement in section 12 to complement what is contained in proposed sections 13D and 13E.

**Clause put and passed.**

**Clause 15: Sections 13D and 13E inserted —**

**Ms M.M. QUIRK**: The clause expands the parties that can receive incident information and includes ICWA. I presume that that is for the purpose of reporting or some level of research into road safety issues.

**Mrs L.M. HARVEY**: It is pursuant to information that can be disclosed to ICWA that is pursuant to its functions under the Motor Vehicle (Third Party Insurance) Act 1943, but not for any other purpose.

**Ms M.M. QUIRK**: We are really grappling to get the road toll down. I can see circumstances in which some limited disclosure should be made to researchers in the area. Will this in being so prescriptive preclude researchers on road safety issues from getting access to information? Will we be closing the door to legitimate research? I can see situations in which some information could be deleted, but the general tenor of the circumstances of an incident might be of great use to researchers.

**Mrs L.M. HARVEY**: That is covered under clause 16, which amends section 15 of the Road Traffic (Administration) Act 2008 to allow incident information to be provided in an incident report made under the Road Traffic Act for road safety purposes. There is the ability for people to access information, copies of statements et cetera in the interests of road safety.

**Dr A.D. BUTI**: This will probably require a simple answer; it is really for my own education. In regards to the disclosure of information to the Insurance Commission of WA for the purposes prescribed in clause 15, proposed section 13D(3) states —

> Information disclosed under subsection (2) may be used in the performance of ICWA's functions under the *Motor Vehicle (Third Party Insurance) Act* … but not for any other purpose.

If information is disclosed that does not relate to the purposes set out, what are the ramifications for any individual who discloses such information? I presume there is something in the bill but I do not know where.

**Mrs L.M. HARVEY**: If the member goes to section 14(3) of the act, there are penalties for misuse of information. They are prescribed there as imprisonment for 12 months or a fine of 100 penalty units.

**Mrs M.H. ROBERTS**: I am looking at proposed section 13D on page 18 of the minister's marked-up copy of the bill. It is headed "Disclosure of incident information to ICWA". Section 13E, which is also proposed to be inserted, is headed "Disclosure of incident information to involved persons". A lot of people may have thought the Commissioner of Police already had power to disclose some of that information. Can the minister advise whether any of that information is currently disclosed by the Commissioner of Police to any of the parties listed or whether this will result in completely new practices?

**Mrs L.M. HARVEY**: This is set out in the explanatory memorandum, but in fact it has been unclear whether the Commissioner of Police has the authority to disclose incident information for the purposes set out in proposed section 13E. We are inserting this into the act so that the commissioner can provide this information to people who have suffered harm in an incident, to drivers of vehicles involved in an incident and to owners of property damaged in an incident. Because there has been a question whether the commissioner has the authority to disclose the information, people were required to submit a freedom of information request. This amendment will give the commissioner the ability to provide for people who have been victims of crashes and suffered harm et cetera to apply directly to the commissioner. Proposed section 13E will give the Commissioner of Police the authority to provide that information to certain persons in those circumstances.

**Mrs M.H. ROBERTS**: I have a further question, minister. I notice that the definition of "incident information" varies between proposed sections 13D and 13E. I wonder whether the minister could explain to me what the key variances are and why?

**Mrs L.M. HARVEY**: Referring to "Disclosure of incident information to involved persons", usually that information is sought so that parties to crashes can identify the other person involved. Often that is related to insurance issues or other factors. Proposed section 13D(1)(c) states —

> a copy of a statement or a report produced as a result of any investigation made into the incident.

That is actually the police report and police statements about the incident. The bill does not propose to allow the disclosure of all that information. We believe the general information sought is the details of any evidence, statement, report or other information obtained as a result of any investigation made into the incident, as prescribed in proposed section 13E(1)(a) and (b).

**Dr A.D. BUTI**: I refer to the disclosure of incident information to the person or representative of the person, whether the driver or the owner. On page 15 of the explanatory memorandum, the minister mentions that —

> The Commissioner may also release the information to a representative of a particular person. A representative may include those who have been authorised to represent the particular person such as family members, a legal representative or an insurance company.

That is common. Firstly, does that authorisation need to be in writing before the commissioner can disclose? Secondly, I presume that category of people—family members, a legal representative or an insurance company—is not exhaustive; it "may" include. Are there any others who may be included and how would we know that they have the ability to be representatives? Is it purely that they have written authorisation from the driver or the owner?

**Mrs L.M. HARVEY**: In order to release incident information, the Commissioner of Police needs to be satisfied that the person to whom the information is being released is an appropriate representative of the person who has been involved in the incident. Yes, that would need to be in writing.

**Dr A.D. Buti**: The class of people is not exhaustive, is it?

**Mrs L.M. HARVEY**: No, it is not. That is an example.

**Clause put and passed.**

**Clause 16: Section 15 amended —**

**Mrs M.H. ROBERTS**: Clause 16 amends section 15, which permits the CEO to release specified information to a person for road safety purposes as defined in the section. This clause is now expanding that definition to permit the Commissioner of Police to release incident information to a person if the commissioner considers that information is required by the person for road safety purposes. There is a definition of "road safety purpose" at section 15. It states —

> (a) the purpose of research directed to the promotion of road safety; or
>
> (b) the purpose of distributing information about road safety.

There is information that may be provided, such as driver's licence information, permit information, vehicle licence information, demerit points information and instruction information. Proposed section 15(3A) states —

> The Commissioner of Police may disclose incident information to a person if the Commissioner considers that the information is required by the person for a road safety purpose.

I notice there are also some penalties. Is this the provision that the Road Safety Commissioner relies on to get information from police, or are there other provisions that permit the Road Safety Commissioner to be privy to information?

**Mrs L.M. HARVEY**: It is for both. The CEO is the Department of Transport and the Road Safety Commissioner. The Commissioner of Police can disclose the information. It is for a road safety purpose for the purpose of research directed to the promotion of road safety or distributing information about road safety.

**Mrs M.H. ROBERTS**: I am not sure that my question has been comprehensively answered. Will the Road Safety Commissioner need to avail himself of this clause of the bill in order to get information from the police commissioner with respect to his ongoing research?

**Mrs L.M. HARVEY**: Yes. If this legislation is passed by Parliament, this is the area that the Road Safety Commissioner will use to access information.

**Mrs M.H. ROBERTS**: Does that request need to be in writing or would there be some general provision to allow the Road Safety Commissioner to get ongoing information from sections or officers within the police service? Would that be given by way of an overall understanding? Is there a memorandum between the Commissioner of Police and the Road Safety Commissioner at the moment, is one proposed for the future, or would the Road Safety Commissioner need to request information on a case-by-case basis?

**Mrs L.M. HARVEY**: No. Initially, we anticipate that there would be an agreement, such as an MOU, for information sharing between the agencies that would be enabled by this amending clause.

**Mrs M.H. ROBERTS**: The first part of my question was: is there an existing memorandum between the Commissioner of Police and the Road Safety Commissioner?

**Mrs L.M. HARVEY**: My understanding is that there is an MOU currently between transport and road safety but not with the Commissioner of Police. However, there has been information sharing around specific purposes. For example, as part of the motorcycle review report, that committee accessed information about motorcycle crashes over a 10-year period using an MOU for that purpose.

**Mr W.J. JOHNSTON**: I draw the minister's attention to section 15(2), which sets out a range of information that may be disclosed by the CEO. I point out that there is no similar provision for the Commissioner of Police. Is there any information in the possession of the Commissioner of Police that may be for a road safety purpose that is not covered as incident information; and, if so, is it the intention of the government to provide an additional right to disclose information similar to the one that is provided to the CEO?

**Mrs L.M. HARVEY**: Other information may be available, but the incident information described in this legislation for disclosure by the Commissioner of Police is information provided in relation to an incident in a report made under section 56(1) or (4) of the Road Traffic Act 1974; details of any evidence, statement, report or other information obtained as a result of any investigation made into the incident; and a copy of a statement or a report produced as a result of any investigation made into the incident. With respect to section 15 (2), that information is held by the Department of Transport, so the CEO of the Department of Transport has the ability to provide that information.

**Mr W.J. JOHNSTON**: I understood that; that is why I asked whether there was any other information in the possession of the Commissioner of Police, because, as the minister has quite rightly said, the information in subsection (2) is information that is in the possession of the CEO. That is why I asked whether it was the intention to give a broader power to the commissioner to disclose any of the other information that is not incident information for a road safety purpose.

**Mrs L.M. HARVEY**: Undoubtedly, this clause refers specifically to incident information. However, the Commissioner of Police can provide a range of other information for road safety purposes—for example, the number of roadside drug tests that are performed, the operational activity of police and those sorts of matters. However, that is not covered under this legislation and it is not required to be covered under the act.

**Dr A.D. BUTI**: Proposed section 15(3A) states —

> The Commissioner of Police may disclose incident information to a person if the Commissioner considers that the information is required by the person for a road safety purpose.

I assume that information can be for road safety purposes, so I therefore assume that that information could be released to the media if there was a road safety program in the media to be facilitated.

**Mrs L.M. HARVEY**: Provided that it fits within the definition of a road safety purpose, which we canvassed earlier—that means it is for the purpose of research directed to the promotion of road safety or for the purpose of distributing information about road safety—then in that context, yes.

**Clause put and passed.**

**Clause 17 put and passed.**

**Clause 18: Section 91 amended —**

**Mrs M.H. ROBERTS**: Clause 18 amends section 91 of the Road Traffic (Administration) Act 2008 and provides for the service of an infringement notice on a person responsible for a vehicle if the identity of the alleged offender is not known. The advice goes on to state that section 91(a), which is where this amendment largely falls, provides that an infringement may not be issued for the offence of using an unlicensed vehicle on a road pursuant to section 4(2) of the Road Traffic (Vehicles) Act 2012. This amendment removes the restriction and, consequently, infringements will be able to be served for the offence based on photographic evidence. I am hopeful of a simple explanation of this amendment. Is it the situation currently that, under the law, somebody driving an unlicensed vehicle at speed past a Multanova or other speed-detection equipment cannot be served with an infringement based on photographic evidence?

**Mrs L.M. HARVEY**: Yes. This amendment will close a loophole. Currently under the act, if an unregistered or, as the member calls it, unlicensed vehicle is infringed by a camera, for example, the infringement notice cannot be sent for either speeding or contravening a red traffic signal offence detected by that photographic evidence. This amendment allows for that infringement to be issued to the person who police reasonably suspect would be in charge of the vehicle—for example, the person to which it was previously registered. To clarify, this amendment also gives us the ability to infringe the person for being in charge of an unlicensed vehicle. Currently, they can be infringed for speeding and red-light camera offences, but the offence of having an unregistered vehicle at the time is uninfringeable. This amendment also allows us to infringe for the offence of having an unregistered vehicle from the photographic evidence of a camera.

**Mrs M.H. Roberts**: What would the penalty be for that?

**Mrs L.M. HARVEY**: It would be a $200 fine.

**Mrs M.H. ROBERTS**: I was just going to query that. The fine for driving an unlicensed vehicle is only $200; is that what the minister is advising?

**Mrs L.M. Harvey**: By infringement, yes.

**Mrs M.H. ROBERTS**: By any other means, what would the fine be if it is not by infringement?

**Mrs L.M. Harvey**: There is a court imposed penalty that we are just researching for the member. It is a fine of 10 penalty units. In addition, the court is to order the accused to pay a further penalty equal to the charges payable under the act for the grant of a vehicle licence for the vehicle concerned for a period of six months. It is six months' registration plus a fine of 10 penalty units.

**Mrs M.H. ROBERTS**: Just by way of clarification, is that the total penalty? If a person pays six months of licence fees, do they get their vehicle licensed for six months or do they have to take it over the pits and go through another process and pay more money for that?

**Mrs L.M. HARVEY**: I am advised that if the vehicle has been unregistered for three months or longer, the vehicle needs to go over the pits. In order to have it reregistered, the owner would need to pay that charge, the cost of reregistering the vehicle, the penalty of the six months' worth of registration, plus the 10 penalty units fine for driving an unregistered vehicle.

**Mrs M.H. ROBERTS**: On one last point of clarification, at what point does a previously licensed vehicle become unregistered? Is it on the last day of registration or is a couple of weeks' leeway given if someone has neglected to pay their car licence renewal?

**Mrs L.M. HARVEY**: There is 15 days grace.

**Mr W.J. JOHNSTON**: I understand the minister to be saying that this provision is being extended to allow the issuing of infringement notices on a wider range of offences. The infringement notice will go to the person who is known to the police even though the driver of the vehicle might not be known to the police. As the minister knows, I wrote to her on a matter regarding a constituent of mine who had been in a relationship with a person and had agreed to sell to that person the vehicle that her late husband had used as a work vehicle. The person then took possession of the vehicle on the basis that he would later pay for it and then actually walked out on the relationship and took the vehicle with him. Then, of course, he did not pay the licence fee on the vehicle and involved himself in speeding and all sorts of other activities, so what happened then was that my constituent was getting the penalty notices for the vehicle that she no longer had possession of. She did in fact go to the police to say that the vehicle was stolen, but the police said it was a civil matter because she had at one time authorised the other person to use the vehicle, even though there was clearly no continuing authorisation for the use of the

vehicle. What she did was that she kept paying the speeding fines. What the minister is now saying is that a person in that situation is going to be subject to penalties for even more offences than is currently the case. I just remind the minister that the solution that was entered into for my constituent, in cooperation with the police, was that the woman signed a document to effectively transfer ownership of the vehicle to the person who had stolen it. I wrote to the minister a number of times about this matter. That seemed to be an extraordinary result, yet that is exactly what happened. I am sure the minister will remember that the police, on a number of occasions, asked my constituent to sign statutory declarations to say that she knew who was driving the vehicle. Although the photographs of the vehicle clearly showed the registration of the vehicle, they did not clearly show the driver, so the police were encouraging somebody to sign a stat dec that she was not confident was true.

Now what we are doing is in fact expanding the number of offences that might happen in such a situation. The minister may quite rightly say that it is a very unusual set of circumstances, but that is the point. It is an unusual set of circumstances, yet under the provision that the minister is asking us to support, that unfairness would continue and there would be no way out of that unfairness. Given that my constituent, an Aboriginal education officer at a high school, is in a part-time occupation—she is a very low paid person—the vehicle that was lost was quite a significant part of her assets, yet that was the solution that was effectively put to her as the only way out of the situation. As I understand from the minister, we are actually extending the provision to even more offences that a person in that situation is going to suffer. I make the point that even if the person took the vehicle with authorisation at the start, clearly there was no continuing authorisation. I remember having this discussion with Hon Christian Porter about the fact that the registration of a vehicle and the ownership of a vehicle are actually separate issues—they are not the same thing. It was this person's asset yet she was being forced to effectively cede ownership of the asset to another person who had taken the vehicle. Even if originally it had been with authority, it was clearly without authority at a later date. It seems that we are extending it —

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

**Mr W.J. JOHNSTON**: I thank the member for Warnbro; I will not take much longer. We are extending those arrangements and there is still no way out of the problem. I am sure the minister is about to tell me that this is a very unusual situation. That is right—it is a very unusual situation, so we should be able to have a procedure to get people out of it.

**Mrs L.M. HARVEY**: As the member said, it is a most unusual scenario and one that is very difficult for legislators to contemplate. The short answer is yes; if the registration of the vehicle falls to the person who is no longer in possession of the vehicle and that vehicle becomes unregistered and is then infringed, that penalty will flow to the last reported registered owner of the vehicle. In those circumstances there is the option to nominate another driver, for example, for infringements and all of these things. I understand that not everybody necessarily understands government forms and police documents when they are presented with them. Particularly in the difficult circumstances of domestic violence, for example, people may not necessarily act the way one would expect. The short answer is yes. In the situation the member has described, that particular individual could also be infringed for driving an unlicensed vehicle.

**Mr W.J. JOHNSTON**: Let us understand what we are doing. I am not saying that they are doing it. This is not a hypothetical; this is an actual case, as the minister knows, because I wrote to her six or seven times on this matter. Here we have a woman who has a car stolen from her. The police will not act because when the vehicle was taken into possession, the police say that the person authorised the man to take the van. That was probably true. But, subsequently, the person continued to drive the vehicle without authorisation. The minister might remember that the police actually knew where the guy was even though the woman did not. Having lost possession of her property, if she does not pay for the licensing of the vehicle and the guy continues to drive it, the person in possession of the vehicle does not get penalised but the person who has had the vehicle stolen gets the penalty. It is bizarre. The minister said it is too complicated for Parliament to legislate. I do not think that is right. A provision could state that a magistrate could set aside an infringement notice if it is manifestly unjust to continue with it, or something like that. I am no lawyer. Perhaps my learned friend, the member for Armadale, could suggest some words, but it seems to me that it is crazy to leave the provision in this constant circle. As I said, in the end, my constituent went to a police station and signed a form to state that she no longer owned the vehicle. That was the solution. At the time and now, that seems crazy.

**Mr P. Papalia**: It's authorising theft.

**Mr W.J. JOHNSTON**: That is certainly the way I look at it; it does authorise theft. I do not believe the argument from police that because at one moment in time the driver was authorised to use the vehicle, that implies a continuation of the authorisation. I do not understand. I am no lawyer, but it does not seem sensible or logical. Nobody will divide on this clause, minister, but it seems to me that it is a flashing light. I think a number

of my colleagues on both sides of the chamber would have sympathy for my constituent in the situation that she was left in. This was an Aboriginal woman who was a part-time education officer at a high school.

**Ms M.M. Quirk**: She was being punished for making more work.

**Mr W.J. JOHNSTON**: She was being punished. She was fined four or five times, I think, for her ex-partner's red-light and speeding offences. Then she gave up the vehicle to him at the road traffic branch, wherever it is. It is crazy, but that is what happened. It does not seem sensible to me. The woman came to see me in tears after she signed away her rights to the vehicle. She showed me the document the police got her to sign; the police had written it up. I read through the document, which stated that she had given up ownership of the vehicle. That was the solution. We are extending the provision now so that if a person does not pay the registration fees for a vehicle that they no longer possess, they will get another infringement if another person continues to use it. There is no way out. That does not seem sensible to me.

**Mrs L.M. HARVEY**: I will not go into too much detail about the member's constituent's issues, but my understanding and recollection of it is that some of the infringements were paid.

**Mr W.J. Johnston**: Yes; she used to pay them.

**Mrs L.M. HARVEY**: As part of that process, once someone has paid, a driver is nominated and they take responsibility for the infringements. I understand that she did not realise the ramifications of doing that. A lot of issues needed to be unravelled and I think the solution that was proposed to her was in the context that she just wanted the whole thing to stop. Am I saying that it was right or just? Probably not, but in the interests of her getting some closure, I think that was why it was recommended to her. It is an unusual situation. We have not necessarily given up on the member's constituent, as yet. However, there are options. For example, the Department of Transport could have been notified at an earlier point that she was no longer in possession and no longer the registered owner of the vehicle. That did not occur until a number of these infringements had already been paid for by the constituent. It is a particularly complex, difficult situation and although she could potentially be caught in an environment of receiving further infringements as a result of this amending legislation, I do not think that we should shy away from the fact that some people drive around in unregistered vehicles and are infringed by red-light and speed cameras, and they should receive a penalty for driving around in a vehicle that is unregistered. An unlicensed vehicle does not have any insurance should the driver have a crash. There are all sorts of ramifications for people who engage in that behaviour, which is why the penalty is so severe and why we have taken this move to ensure that they can be infringed as a result of this amending clause.

**Mr W.J. JOHNSTON**: I will not delay the chamber any longer, but I make the point that there is no way out other than to give up possession of the vehicle. That cannot possibly be the solution, yet it is currently the only solution available. That is my point. The minister said that the constituent could have told the Department of Transport earlier; we wrote to the then Minister for Transport—not the current one, the former one—and there was no solution other than to say that she no longer owned the vehicle. There is an assumption that registration and ownership are the same thing and they are not, as my good friend Hon Christian Porter points out in *Hansard* from ages ago. As any lawyer knows—this is basic contract law—there is offer and acceptance; if a person pays money, they get possession of the goods. It does not matter who registers the vehicle—that is a separate issue—because there has already been offer and acceptance. The problem was that there was no offer and acceptance. I could live another hundred years and not have another constituent in the same position but, if I did, the only solution would be to give up the vehicle. We are not voting against the clause—we are not dividing—but surely we could have a provision in the legislation to give power to somebody like a magistrate to get out of the problem. My constituent paid all those fines because she could not sign a declaration to say who was driving the vehicle; the photograph of the vehicle doing the illegal thing did not identify the person in the vehicle. She suspected that it was her ex-boyfriend but she could not prove it; she could not sign a statutory declaration to say it was that person, which meant that she was responsible for the fine.

**Mrs L.M. Harvey**: By way of interjection, she could have signed that she was not the driver and that she suspected the driver was another person. There are mechanisms.

**Mr W.J. JOHNSTON**: Has the minister read the words? That is not true. The minister misunderstands what it says on the form. It says that the person has to be identified. If the person cannot be identified, they are responsible for the fine. That is simply what happens—read the clause in front of us. There is no doubt about that. My constituent signed statutory declarations that were written for her by police officers that were not correct because she did not want to get involved in a fight. She did not want to pay the bills when she could avoid it. All I am saying is that I think we need to have a provision that allows for these one-offs—very, very unusual circumstances. I do not think that anybody who is listening in the chamber disagrees with me.

**Clause put and passed.**

**Clause 19: Section 106 amended —**

**Dr A.D. BUTI**: There is a very detailed explanation of this clause in the explanatory memorandum, even though the amendment is not overly long. To clarify, through this amendment, if I have it right, as a result of previous legislation and so forth, there were consequences that the minister now wishes to amend through this amendment of section 106(2) in clause 19 of the bill. Will the general provisions of the Criminal Procedure Act 2004 in section 21(2) now apply and therefore prosecution will have to be within 12 months of the alleged offence or, for indictable offences, is there no limitation period? I presume that is the minister's interpretation. In other words, even though there is no limitation period, does the prosecution still have to come within a reasonable time frame? Does the prosecution have to be brought at the first available period or can it be brought at any time? If it is not trying to defend the possible accused, there is an issue about bringing the prosecution within a period of time because the longer it is delayed, it may become prejudicial. Even though there is no limitation period, as I understand is the case for indictable offences, does any provision under the Criminal Procedure Act 2004 require it to be brought in a reasonable, practical time?

**Mrs L.M. HARVEY**: In effect, proposed section 106(3) indicates that section 106(2) does not apply to an indictable offence. Proposed section 106(4) states —

> Subsection (3) has effect, in relation to an offence that was allegedly committed before the day on which the *Road Traffic Legislation Amendment Act (No. 2) 2015* section 19 comes into operation, as if that section had come into operation on the day on which this Act (other than sections 1 and 2) came into operation …

In effect, for those indictable offences, there is no time limit for when they can be investigated and prosecuted, as per the Criminal Procedure Act.

**Dr A.D. Buti**: That is section 21(1), right?

**Mrs L.M. HARVEY**: Yes. It removes the restriction on the ability to prosecute offences in that anomalous scenario that occurred, in which some of these road traffic offences had a 12-month limitation on our ability to bring a prosecution.

**Dr A.D. BUTI**: That is right, minister, but I am wondering whether there is any onus on the Crown to bring a prosecution in a timely fashion. Even though there is no limitation period, when it is established that there is an offence, is there a period that is considered to be reasonable?

**Mrs L.M. HARVEY**: Generally, it is desirable to bring these things forward in a timely fashion. It is seen as an abuse of process to not act in a timely fashion to try to bring these prosecutions forward.

**Dr A.D. BUTI**: I was just wondering whether the minister's advisers have a copy of the Criminal Code, because I do not have it with me, but the explanatory memorandum also refers to section 3(3) of the Criminal Code. What does that refer to?

**Mrs L.M. HARVEY**: It is the definition of an indictable offence.

**Mr J.R. QUIGLEY**: Can the minister clarify something for me? Under one of the other clauses we have dealt with, someone who, for example, fails to stop to render assistance, is guilty of a crime. Under new section 54(3)(a), (b) and (c), dealing with the punishments for a crime, there is a provision for the offence to be dealt with summarily, and there is a reduced penalty regime if it is dealt with summarily. My question is about section 106(3). What is the limitation period on the prosecution of an offence under section 54(3), when the matter is dealt with summarily and not on indictment?

**Mrs L.M. HARVEY**: I am advised that this is known as an either-way offence. It is an indictable offence, so it is treated as if it were an indictable offence for the purposes of these limitations.

**Clause put and passed.**

**Clause 20: *Road Traffic (Authorisation to Drive) Act 2008* amended —**

**Mrs M.H. ROBERTS**: I notice that this clause amends the Road Traffic (Authorisation to Drive) Act 2008. The explanatory memorandum states —

> The RTA creates a number of offences, the penalty for which includes both a term of imprisonment and a mandatory disqualification.
>
> It was always intended that a disqualification period, or part thereof, should not elapse while the person upon whom the disqualification was imposed was serving a custodial sentence.

> Prior to its deletion by the *Sentencing (Consequential Provisions) Act 1995*, the RTA section 75(4) provided:
>
> *Where a person convicted of an offence is sentenced to imprisonment and disqualified from holding or obtaining a driver's licence for a period, the period of the disqualification shall be computed from the date of his release from imprisonment, whether on parole or otherwise.*
>
> The Sentencing Act 1995 section 103(1) provides that "*If a disqualification order is made in respect of an offender, the term of the disqualification does not elapse … while the offender is in custody serving any sentence of imprisonment …*"
>
> The provisions of the *Sentencing Act 1995* section 103(1) do not apply in the case of a disqualification imposed under the RTA.
>
> This is not what was intended.

Clearly, what we were advised was intended when we dealt with this legislation in the past has not come to fruition. The memorandum continues —

> This clause adds section 23A to the *Road Traffic (Authorisation to Drive) Act 2008* to ensure that where a disqualification is imposed under the RTA, the disqualification period, or part thereof, does not elapse while the person upon whom the disqualification was imposed is serving a custodial sentence or while appealing against the conviction or sentence giving rise to the disqualification. This amendment brings mandatory disqualifications imposed under road laws in line with disqualifications imposed by the courts under the *Sentencing Act 1995*.

This seems to be quite an appropriate measure, but again it highlights that when scrutinising legislation, what happens in practice is sometimes unintended. It means that when we do not get it right the first time, we have to bring it back and amend it. I am not sure whether the minister has any further comment on the necessity of this provision, or any information about the number of people who have each year effectively been able to serve out their disqualification periods while they are serving custodial sentences, so that we can understand the magnitude of this issue.

**Mrs L.M. HARVEY**: This issue was highlighted when Melissa Waters, who was convicted in 2013 for dangerous driving causing the death of Nate Dunbar, was to be released from prison on parole. Her licence was disqualified for three years, but the majority of the licence disqualification occurred while she was incarcerated, which effectively meant that there was no disqualification penalty of any consequence, because she was not able to drive in any event. This clause makes the mandatory disqualifications imposed under the road laws consistent with the mandatory penalties under the Sentencing Act 1995, so that the period of disqualification commences on the day of release from prison.

**Clause put and passed.**

**Clause 21: *Young Offenders Act 1994* amended —**

**Mrs M.H. ROBERTS**: We are advised in the explanatory memorandum —

> The *Young Offenders Act 1994* provides power for police to administer a caution or refer a matter to a Juvenile Justice Team instead of laying a charge against a juvenile. There are exceptions to this arrangement for certain offences that are listed in Schedules 1 and 2 of this Act.

I am querying which act we are talking about. I assume we are talking about the Young Offenders Act; if that is not correct, let me know, please, minister. It states —

> Due to drafting omissions in previous Bills, several offences in the RTA that appropriately should be included in the Schedules were missed.
>
> Schedule 1 offences are those for which a caution cannot be given, which cannot be referred to a Juvenile Justice Team and for which a conviction will normally be recorded. This Bill amends Schedule 1 by inserting 'Dangerous driving' (Section 61 RTA), 'Careless driving' (Section 62 RTA), 'Causing excessive noise/smoke' (Section 62A RTA) and 'Failing to comply with the requirement made by a police officer in respect to breath testing' (Section 67A). The reference to section 67 RTA is being expanded to include the offence of failing to accompany a police officer.
>
> Schedule 2 offences are those for which a caution cannot be given, …

Are cautions currently being given for any of these offences? Are we talking about 17-year-olds with a driver's licence? If we are looking at dangerous driving or careless driving, surely 17-year-olds have qualified for a driver's licence. Has there effectively been a loophole here for juveniles who are aged 17 and are under 18?

**Mrs L.M. HARVEY**: Currently, some of these offences can be dealt with by caution or by referral to a juvenile justice team. If the matter is taken to court, the court can also refer the matter back to a JJT. The effect of this amendment is to ensure that we exclude those serious offences from the ability for a caution to be issued and referral to be made to a juvenile justice team, to ensure that the courts treat those offences with the appropriate level of seriousness and hold the juveniles responsible for their actions.

**Mrs M.H. ROBERTS**: Can the minister point out where schedules 1 and 2 are?

**Mrs L.M. HARVEY**: They are schedules 1 and 2 of the Young Offenders Act.

**Mrs M.H. ROBERTS**: The minister says that she is amending those schedules. I cannot see in any marked-up bill where that amendment goes or what is being amended here. How does that work?

**Mrs L.M. HARVEY**: I refer the member to clause 21, which shows what we are amending. It states —

> **21. *Young Offenders Act 1994* amended**
>
> This section amends the *Young Offenders Act 1994.*
>
> (2) In Schedule 1 item 3:
>
> (a) after the row relating to section 60 insert:
>
> *s*. 61 Dangerous driving
>
> *s*.62 Careless driving
>
> *s*. 62A Causing excessive noise or smoke from vehicle's tyres …

It is all laid out in the amending clause.

**Mrs M.H. ROBERTS**: Thank you, minister; I can see that. Even though I have the Young Offenders Act handy, I am still having some difficulty in finding the schedule and making sense of it, but that is not the minister's concern.

**Mrs L.M. HARVEY**: It is at page 157 of the Young Offenders Act.

**Mrs M.H. ROBERTS**: Thank you, minister; excellent. Clearly these are matters that, up until this legislation goes through Parliament, are able to be referred to a juvenile justice team. There must, therefore, be other presumably lesser offences that can still be referred to a juvenile justice team. Was consideration given to any other offences; and, if so, what other offences were considered?

**Mrs L.M. HARVEY**: Nine offences are listed under schedule 1 and we are adding further offences to that. A range of other offences under the Road Traffic Act are obviously not in the schedule. The schedule pulls out those offences that we believe need to be treated in this more serious manner; there might be 11 offences listed there. The more serious offences are pulled out into the schedule, rather than the Road Traffic Act being considered on its whole. I hope that explains it.

**Mrs M.H. ROBERTS**: I turn my attention to page 141 of the Young Offenders Act. I do not know whether the minister has a different version from mine, but the Young Offenders Act 1994 of 9 October 2015 has been given to me tonight and I have now identified schedule 1 on page 157. I presume that is what the minister is referring to.

**Mrs L.M. Harvey**: Ours is current for November 2013, so we have a different version from the member for Midland's copy.

**Mrs M.H. ROBERTS**: My version is 9 October 2015, which I gather is the latest reprint.

**Mrs L.M. Harvey**: We have a different version.

**Mrs M.H. ROBERTS**: That lists all the offences under the Criminal Code, the Misuse of Drugs Act and the Road Traffic Act 1974. I note that a list of offences to do with drink-driving and the like is already included in schedule 1. A couple of offences are already listed under the Road Traffic Act in schedule 2: section 59, "dangerous driving causing death, injury", and section 59A, "dangerous driving causing bodily harm". It would appear that although it already lists offences under sections 59 and 59A, this adds sections 61, 62 and 62A. I think the other amendments are just tidying up references to section 67. Therefore, we will support this clause.

**Clause put and passed.**

**Clause 22 put and passed.**

**Clause 23: Section 59 amended —**

**Mr R.F. JOHNSON**: I intend to move an amendment now to this clause and I have to circulate the amendment. I move —

Page 16, after line 7 — To insert —

(1) In section 59(3):

(a) in paragraph (b)(ii) delete "person," and insert:

person.

(b) delete "and, in any event, the court convicting that person shall order that he be disqualified from holding or obtaining a driver's licence for a period of not less than 2 years.".

(2) After section 59(4B) insert:

(4C) A court convicting a person on indictment of an offence against this section must order —

(a) that the person be permanently disqualified from holding or obtaining a driver's licence, if the incident occasions the death of another person and either —

(i) the offence is against subsection (l)(a), (ba) or (bb); or

(ii) the offence is against subsection (1)(b) and is committed in circumstances of aggravation;

or

(b) that the person be disqualified from holding or obtaining a driver's licence for a period of not less than 2 years, in any other case.

I foreshadowed that I would be moving an amendment to this legislation during consideration in detail. I, and I think every member on this side of the house and, indeed, those families who have had a loved one killed—let me put it quite bluntly—by a drink-driver want to support this amendment. To a great extent, a lot of what I said last week is covered in this amendment. Before anybody says that I cannot ask the same question twice, it is not the same question. It is not identical to what I put before the house last week. I have had this amendment checked with the clerks and they assure me that what I have in front of the house today is legitimate and perfectly okay under the standing orders.

I am absolutely disgusted with the actions of this Minister for Police; Road Safety. She has shown no concern whatsoever for those victims who have been killed by drink-drivers or drivers under the influence of drugs, or their families. The only reason the minister has shown no concern for my bill is that it was introduced by me, the member for Hillarys. It is a very simple bill, comprising six clauses. She knows that is true. I know for a fact that she told the Liberal Party before the winter recess that the legislation that I put before the house was seriously flawed. When I asked why it was seriously flawed, she could not say. She told the party room that I put into the bill a benefit to those families of the drink-drivers so they would not be disadvantaged. It would enable those drink-drivers to access a motorcycle that did not exceed 110cc—in other words, a postie bike—so they could get to and from work. She said that there was no such class of licence. There does not have to be a class of licence. We could put that on a driver's licence just as we could put on an extraordinary licence the statement that the holder of that licence is allowed to drive only between 8.00 am and 5.00 pm between A and B. That is quite legitimate; it happens all the time. The reason given to the party room was quite spurious.

When I referred to my amendment last week, which I am referring to now basically in much of the content, she said that she would not support it. She was the only person in this whole house who spoke against my bill—the bill that I introduced with the assistance and the absolute support of people who have been devastated by drink-drivers. One particular case involves the Roberts sisters, Catherine and Michelle—two extremely lovely young ladies who tragically lost their father last year to a drink-driver. He had so many beers, he could not count. He went on the wrong side of the road and killed their father. That person got five years' jail but he will be out after about three and a half years. He will serve four years in jail with a suspension. Those sisters are not happy with that sentence. They never want to see that person behind the wheel of a car again. They are part of the reason I introduced the bill. They are also part of the reason I moved this amendment in the chamber tonight.

**Mr D.A. TEMPLEMAN**: I am very keen to hear further information from the member for Hillarys.

**Mr R.F. JOHNSON**: I spoke to the sisters last week when the bill was defeated by the Liberal Party and they were absolutely devastated. The media wanted them to go on camera to condemn the minister and the Liberal Party for voting down that particular bill. Unfortunately, one of them was unwell. The sister who would normally take the lead on this sort of thing was quite unwell and was not even at work. I spoke to her. She would

have loved to have done that. She was devastated that this minister and the Liberal government knocked back legislation that would have been some sort of justice for the loss of their father.

Quite a well-known journalist who is on 6PR, Gary Adshead, has taken up this case as well. He has been an advocate for banning people for life if they kill somebody whilst they are drunk or under the influence of drugs. He also spoke to me last week. Another family member on his program, Mr Christensen, lost his wife because of a drunk driver. He is devastated. This government is basically doing nothing about justice for him and his family. He is also severely disabled and was brain damaged in the accident.

People who have lost their loved ones to drunk drivers all say the same thing: they never want those people to get behind the wheel of a car again. The Minister for Police, to try to justify voting and speaking against my bill, said that it will be a punishment on the families of these offenders who will have to drive the offender around. She said that it will also be a punishment on the taxpayer because in Western Australia it is hard to get full-time employment without a driver's licence, especially in regional Western Australia. That is why I moved the clause. I added the part about them being able to access a postie bike—they could have got to work. They would not have driven their children to school or their elderly relatives to hospital appointments. The person who has been killed on the road is never going to spend time with their children or their elderly parents, never mind driving them to school or to hospital appointments. They have lost the wonderful opportunity to spend time with their children or their family. But the minister seemed more interested in the families of the errant driver—the drunk driver or the drugged driver. I find that absolutely extraordinary.

The person who "killed"—there is no other word for it—Mr Christensen's wife through drunken behaviour behind the wheel was only given two years' jail. Members can imagine how soon she will get out of jail. A two-year jail sentence with parole, she will be lucky to serve a year. Following that, she was banned from driving for five years. Before that time, she tried to get an extraordinary licence and was granted one! It was only the good sense of an appeal court that turned it back and she is not allowed to drive. But she can apply for another one. It is quite obvious; it has been in the media that she can apply for another one. I was trying to avoid that situation and I still want to try to avoid it. I will not stop; I will keep bringing things before this Parliament. Now and in the next term of Parliament I will be bringing it as well, no matter what side of the house I am sitting on. I feel so sorry and I have tremendous sympathy for those families who have lost loved ones. It is bad enough when someone in your family is critically injured by a drunk driver, a reckless driver, a drug-driver or a driver who is being pursued by police. It is bad enough if they are critically injured, but when you lose somebody, you have lost them forever. They are never there at any Christmastime. They are never there for any birthdays. They are never there for any times to rejoice in family life.

The minister also used the excuse, "We'd need to amend other acts." This bill before the Parliament could quite simply incorporate my very simple amendments—there were only six clauses; two or three were simply housekeeping ones, the title of the bill, proclamation and so on and so forth. The bill before the house today could incorporate those clauses quite easily. I am sure it is not too hard for this minister. I think she is showing a vindictive attitude towards me because I introduced the Road Traffic Legislation Amendment (Disqualification for Life) Bill 2016. If a member of the Liberal Party introduced the bill, she would probably have accepted it. It goes through the Liberal Party room, as Mr Acting Speaker (Mr P. Abetz) knows—you have done it yourself. But at the end of the day the Premier and ministers do not like anybody bringing in private members' bills.

**Mr J.H.D. DAY**: I move the question be put.

**The ACTING SPEAKER**: The question is —

**Mrs M.H. Roberts**: No-one on this side of the house has had an opportunity to speak!

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

*Point of Order*

**Mrs M.H. ROBERTS**: Not a single person on the Labor side has had the opportunity to comment on the amendment whatsoever.

**Mr J.H.D. Day**: You could have.

**Mrs M.H. ROBERTS**: How could I have had? I have been waiting for the call! It is outrageous.

**The ACTING SPEAKER (Mr P. Abetz)**: That is not a point of order. Member for Midland, I think we have all been in this place long enough to know that the question that the motion now be put is not debatable and therefore the motion has to be put before the house.

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

**The ACTING SPEAKER**: Member for Hillarys, please restrain yourself.

The motion is before the house; the question is —

**Mr D.A. TEMPLEMAN**: Mr Acting Speaker, I just want to clarify whether the member for Hillarys' time had expired before the Leader of the House moved the gag motion. I ask that you would consider that.

**Mr J.H.D. Day**: I am happy if you did not hear the motion, Mr Acting Speaker.

**The ACTING SPEAKER**: I am just seeking some advice on the procedure. Procedurally, I have just been informed that because I said "the question is", that precludes that from coming forth.

**Mrs M.H. Roberts**: Thank you, Mr Acting Speaker.

**Mr J.H.D. Day**: It shows how reasonable I am.

**The ACTING SPEAKER**: Members, I misunderstood the advice. Because the member for Hillarys' time had expired, the Leader of the House was at perfect liberty to move the motion that the question be put.

**Mrs M.H. Roberts**: But he agreed that he is very reasonable and you may not have heard him, Mr Acting Speaker, and he is happy for me to speak.

**Mr J.H.D. Day**: You did not hear me properly, Mr Acting Speaker.

**The ACTING SPEAKER**: With the agreement of the house, I will allow it.

*Debate Resumed*

**Mrs M.H. ROBERTS**: Thanks, Mr Acting Speaker. I rise to speak in support of the amendment moved by the member for Hillarys. He has been getting some very shabby treatment here. I believe that people in this house should deal with the issue and not judge this amendment by the fact that they may or may not like the member for Hillarys or he is no longer in their party. This is a very serious issue. There are injustices happening in our community on a daily basis. A little while ago the minister referred to the case of Nate Dunbar and the person who killed him. This is a picture of him, if any member cannot remember that circumstance. A drunk-driver ploughed into his bedroom, where he was killed. The minister said that one of the reasons the change is being made so that people cannot serve out their licence suspension time while they are in jail is the circumstance that occurred in that case. He was killed in 2013. I will read an article by Kate Campbell in PerthNow on 24 July 2015, which is over a year ago. It states —

> THE drunk driver who killed baby Nate Dunbar when she ploughed into his nursery walked free from prison early on Friday morning after serving less than two years behind bars.
>
> For the Dunbar family, the day they have been dreading has arrived, with Melissa Ann Waters—a mother herself—released on parole from Boronia Pre-Release Centre for Women in Bentley.
>
> The minimum-security facility is where Waters has spent all but two of her 22 months behind bars.
>
> It is understood Waters was released through a rear exit and avoided waiting media—a move which supporters of the Dunbar family described as "gutless" and "back door freedom".
>
> "Just sickening more support to this criminal and none to Nate's family," a post on the Justice for Little Nate Facebook page stated.
>
> Waters had a blood alcohol reading of 0.17 when she crashed her vehicle into the Dunbar's Merriwa home in January 2013, killing the eight-month-old boy.
>
> She was sentenced to three years and eight months in jail after pleading guilty and was granted parole at the earliest opportunity.
>
> The Dunbar family say Waters' early release is a slap in the face, …

In the brief amount of time I have available to me, I want to say that we have an anomaly. I found out tonight from the minister that apparently Waters' driver's licence suspension was served while she was in jail. I am glad that we are amending the Road Traffic Act so that people cannot serve their driver's licence suspension while in jail, because that is just wrong. I do not know what the suspension allocation was. I am guessing that with 22 months in jail, it was probably completely served while she was in jail and she was presumably able to apply for a driver's licence when she got out. Perhaps the minister can enlighten us if she knows the circumstance.

The fact of the matter is that under the amendment before the chamber, she would not be able to go and get a driver's licence. One might say that that is pretty harsh for a young woman, but think how harsh it was for that young life, the eight-month-old who does not get the opportunity to live a life. Think how harsh it was for his

parents. I think both his parents would probably happily never drive again if they could have their baby back, so put things in perspective. Is the car such a mighty object that all of us have some intrinsic right to be able to drive one in the community, no matter what we have done? If people get behind the wheel when they are drunk or on drugs and they kill another human being—whether it is the father of the Roberts girls who recently sat in the gallery, or this little baby—it is just wrong that they can get their licence back again in such a short period. If the minister does not agree with life suspension and thinks it is too harsh, she should put forward some other suggestion. She has the numbers; what will she agree to? Is 10 years appropriate? Is 20 years appropriate? Maybe if someone is 25 when they commit this offence, perhaps the minister thinks they should get their licence back at age 45 or 55; but they should not have the chance to get their licence back at age 27. It is just wrong. They might find it more difficult to get a job, but people can get a job without a driver's licence.

**Mr P. PAPALIA**: I think the last observation made by the member for Midland is a really valid one and we should explore it. Since the government is unwilling to accept the amendment as it stands, and noting the valid point that has been put—that clearly there is an inadequate penalty or restriction placed on people who have killed someone in these circumstances—why can the government not come up with another solution, if it is not willing to accept this particular restriction? Not that we on this side think it is unfair or excessive, but if the government views it that way, why does it not propose an alternative penalty or at least an alternative extension of the penalty, as suggested by the member for Midland? Rather than rejecting it outright, despite the fact that we know many members on the other side agree with the proposal anyway, why does the government not come up with an alternative? We understand that the government is constrained and incapable of accepting the proposal by the member for Hillarys for purely political reasons and vindictiveness, I would say. Conceding that right now, why is the government incapable of providing an alternative? The Leader of the House is keen to get on with the movement of this legislation through the chamber and is unwilling to give the member for Hillarys any further platform, but probably agrees with the proposal apart from that. Given the combined intelligence and capabilities of the government, the other side of the house, with all the resources of government at its disposal, why can it not come up with an alternative penalty or an alternative extension of the penalties imposed on these particular individuals rather than just rejecting them outright on the grounds that it does not like the member for Hillarys? We on this side can see that the government is obviously not going to let the member for Hillarys' proposal stand; it is desperate to shut him down and to have him stop talking about an issue on which he has more credibility than just about anyone—certainly anyone in the Western Australian Parliament. He is capable of speaking from personal experience on this issue, but the government desperately wants to shut him down more than anything else. It has nothing to do with the quality of the proposal or the nature of the legislative changes he has suggested. If the government honestly feels that there is something wrong with it, it should provide an alternative, because it is going to be asked about it. Regardless of what happens tonight, the government is going to continue to be asked about it and is going to be questioned on the subject constantly. It removes any remnant claim that the government might have. If there is a remnant claim that the government has some sort of claim on being tough in its response to this type of offence, it is only tenuous. What the government is actually doing is eroding any sense of legitimacy of these amendments. If the minister is capable of considering it, she should do so at this time. If she is not going to allow the member for Hillarys' amendment, she should at least offer an alternative. She should work with the opposition and provide a different outcome—something that would go towards satisfying all those people out there who see the nature of the outcomes at the moment as being really unjust. Despite the changes the government is proposing, it is not solving the problem.

**Ms M.M. QUIRK**: I will just wait until the minister has finished on her phone.

**Mrs L.M. Harvey**: I'm just telling my children to go to bed because I'm still here.

**Ms M.M. QUIRK**: Excellent. Great. That is your job, minister.

**THE ACTING SPEAKER**: Please direct your comments through the Chair, member for Girrawheen.

**Ms M.M. QUIRK**: We hear in this place so frequently that we need to impose penalties within —

Several members interjected.

**The ACTING SPEAKER**: Members, keep your voices down, please.

**Mr P.B. Watson**: What did you say?

**Ms M.M. QUIRK**: Something he should withdraw, I suspect.

We hear in this chamber that we should, within legislation, impose penalties that, firstly, reflect the seriousness of the offence, and, secondly, act as a decent deterrent. The fact that over 25 per cent of our fatalities are directly attributable to drink-driving—I suspect it will be higher once we have that testing in place and we can get some better evidence—clearly means that the deterrents that are imposed under legislation at the moment are not

working. We have to say to people, "This is it—you're never driving again and you face a lengthy term of imprisonment." What is in the legislation does not act as a deterrent.

Several members interjected.

**The ACTING SPEAKER**: Members, there are too many conversations going on. Just keep your voices down or take the conversations outside.

**Ms M.M. QUIRK**: As the member for Hillarys and others on this side have amply demonstrated, it is one thing if it affects just the offender, but there is a flow-on effect to families, relatives and friends—lives are never the same again. We should treat this offence with the utmost seriousness. The minister's rhetoric stands for nothing if she opposes this amendment.

**Mrs L.M. HARVEY**: As I said when we had the debate around this exact amendment last week, the government does not support it because it does not cover off on other consequential amendments that need to occur for it to do what the member for Hillarys purports that it will do.

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

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

**The ACTING SPEAKER**: Members!

**Mrs L.M. HARVEY**: Thank you, Mr Acting Speaker; I appreciate your protection.

Effectively, any person who receives a lifetime disqualification or a long period of disqualification can apply for the disqualification to be lifted after 10 years. This amendment will not achieve what the member for Hillarys is telling people it will achieve, which is a lifetime ban on driving. Members cannot go about telling people that they have an amendment that they are putting forward in Parliament that is going to do one thing when they know full well that it will not do that unless they get the other consequential amendments correct. When we had this debate last week, I flagged that in my conversations with victims of these sorts of crashes, they told me that what they want is for those offenders to go behind bars for longer. That is what the government is currently considering with the Road Safety Commission—longer sentences for those offenders who kill or cause grievous bodily harm to people when driving under the influence of alcohol. That is what we are looking at. In the interim, to put an amendment through that does not achieve its purpose or do what the member for Hillarys is misleading the community about what it will do is not a responsible thing for this government to do. Longer sentences are what these people want. Nate Dunbar's family wanted the offender who killed their eight-month-old to be behind bars for longer. What happened after she was released, was a further slap in the face to them. We are changing the legislation so that the period of disqualification comes into effect on release from prison. But is 22 months appropriate as a term of imprisonment for taking the life of an eight-month-old sleeping in his cot? Most people say no. The preliminary research we have done into this matter shows us that people are still receiving suspended sentences for some of these offences. I do not believe that is appropriate. That is what the government is looking at. We will bring forward amending legislation with harsher consequences for these offenders. It may well be that those amendments are placed on the notice paper in the Legislative Council when the legislation goes through to that house. We are doing the work on that at the moment. From my conversations with victims—families who are left grieving for their loved ones they have lost in this fashion—I have been told that those people should be behind bars for longer. That is what the problem is. Less of a problem is what happens when they are released.

**Mr W.J. JOHNSTON**: The minister would have elicited some sympathy if it were not that we are 23 days from the end of the parliamentary sitting and 200 days from an election. After eight years in government, all the minister is saying is that she is going to get around to it. It is not as though the minister has not been aware of these issues. The legislation has been introduced by my colleague the Liberal Independent for Hillarys and debated in the chamber. At the time of that debate, we discussed the fact that amendment after amendment to this Road Traffic Legislation Amendment Bill (No. 2) is in the minister's name. She is happy to amend the bill we are debating with seven pages of government amendments.

**Mr R.F. Johnson**: Nine pages.

**Mr W.J. JOHNSTON**: There we go, nine pages of amendments to the bill but not a word about longer disqualification of drivers who have killed people. The minister's strange defence is, even if the member for Hillarys' amendment was passed, the suspension would be for 10 years. If the minister does not agree and wants the suspension to be for life, she has the power; she is it; she has the numbers. It is strange listening to the minister saying with 23 days of Parliament to go, we will get it done. I would have thought that with 23 days of Parliament left it would have been achieved. Here she has that opportunity in the form of the amendment moved by the member for Hillarys and, clearly, drafted by people of standing, who give advice to us all on these matters.

Just like the amendments we dealt with earlier when we had to eliminate section 50 of the Road Traffic Act because there was a conflict in the drafting that was brought to the Parliament by the government with the previous legislation, of course, the parliamentary drafter sometimes gets things wrong. But with all the resources at the government's disposal, do not argue about technicalities—tell us about the fundamental belief. That is what we are debating, not the particular words, because the minister has every power. If she has better words, she should bring them to us. She said she might even bring them into the other chamber when the bill gets to the other chamber. That is how close she is with this stuff. "Gunna, gunna"—how about we do it? We know these words are good because they have been professionally drafted by the same public servants who draft for all of us.

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

**Mr W.J. JOHNSTON**: We do not expect the minister to listen to any arguments. If there are better words, give them to us. It does not make any sense. At the very least, can the minister give us a commitment that the issues raised by the member for Hillarys will be dealt with when the bill gets to the other chamber? There are just 23 days of Parliament to go. Remember, if the bill is amended in the other chamber, it has to come back here to get through this chamber. There are all the parliamentary rules and also the strange procedures of the other house to go through. This is the minister's opportunity to get on the record. The minister said that she will vote against the amendment because she does not agree with the idea. The minister cannot say that she is voting against it because the words do not work, because she has had months to get the words right and she has never made her own proposal for other words. It is time to stop pussyfooting around and get behind the sentiment provided by the Liberal Independent for Hillarys by supporting his amendment.

**Mr R.F. JOHNSON**: I am not surprised that the minister and the Liberal Party will not support the amendment I have put before the house. Once again, I think that some members on the other side of the house should feel ashamed that they are not prepared to even stand up and speak in support of the minister. They will vote with the minister, but they do not have the guts to stand up and speak against this amendment that I have put before the house. It was the same last week. Members opposite know that people in their constituencies would support this amendment. The minister said that anybody who is given a lifetime ban can apply for a licence after 10 years. That happens at the moment. The courts have issued lifetime bans on people who have driven badly or killed people. The courts already do that. I am fully aware that people can apply for an extraordinary licence or a new licence after 10 years. My amendment does nothing to negate what is already in place. Lifetime bans are already in place. The courts have normally issued those lifetime bans, not the government. People can apply for a licence again after 10 years; I know that. If the minister were true to her word, she would accept this amendment today. Forget any hostilities and any nasty things about Rob Johnson, the member for Hillarys, being a nasty bit of stuff. Let us think about those victims and those families. The minister knows; she is talking about toughening up the legislation. What will the minister do? Will there be minimum mandatory sentences? If so, how long will they be? What length will the minister give as a minimum mandatory sentence—10 years, 15 years? The courts can already impose an option of 20 years. I have said time and again, as other people have, that the courts never impose maximum sentences because there is always something worse down the road that somebody could commit that warrants a maximum sentence. What sort of minimum mandatory sentence is in the minister's mind? I have been honest with the minister and Parliament. I have told members how I feel about this legislation and about the victims and the families of drink-drivers and drug-drivers. At the moment, the minister is supporting the drink and drug–drivers.

**Mrs L.M. Harvey**: No, I'm not.

**Mr R.F. JOHNSON**: Yes, you are by opposing this —

**Mrs L.M. Harvey**: Don't mislead the house; I am not.

**Mr R.F. JOHNSON**: I am not misleading the house.

**The ACTING SPEAKER**: Members!

**Mr R.F. JOHNSON**: The minister should ask Catherine and Michelle Roberts what they think. They were devastated last week when I told them that the minister got her colleagues to vote down the bill. I say shame on the members opposite. They should get up and say that they oppose the amendment to let their constituents know how they stand on drink-drivers being allowed to drive again when they have killed somebody. There is not a word, but members opposite will vote with the minister on this. Some members opposite have been my friends for many years but I have to say that I am ashamed of some of them because some of them are completely gutless. They simply go along with the minister on this, which is wrong. They should stand up for the people in their electorates. That is what they have been elected to do. Their first priority should be the people in their electorates and the party second. They represent the people of Western Australia and the

people in their electorates. Do not be just party hacks who are dragged along like sheep by the leadership that is there at the moment. Show some decency. Show some integrity. We talked about integrity recently; there is not a lot of integrity around this place at the moment—not on the other side of the house.

I am very grateful to the people on this side of the house, the Labor opposition, for the support they have given this amendment. They did not have to support it, but they can see its benefit. The victims will not get any benefit, but the families of the victims will. They will get some sort of peace and closure knowing that the person who killed their loved one will never drive a four-wheeled vehicle again. That is not too much to ask. The minister is mute when I ask what sort of minimum mandatory sentence is going to be imposed. I do not believe she will. If she does, it will be in the dying days. There are 23 days of this Parliament left, as the member for Cannington said. We have stacks of other bills to deal with. We still have Treasurer's advance bills that it has been promised would come back into this place before we rise. I cannot see them coming back. I am told that the Treasurer is going to bring in a bill for $1.3 billion or $1.4 billion so we can pay public servants their salaries. What chance have we got of doing anything in this situation other than what we can do today? We can do this today. It is a simple amendment. If we want to change the 10-year option for a person to be able to apply for a driver's licence, it can be changed tomorrow.

**Mrs M.H. ROBERTS**: I have already put on record my support for the member for Hillarys' amendments. I think people in this house know he is speaking from some very close personal experience. He and his family are also victims of a road crash and in my view he has greater empathy than anyone in this house for what it is like to be a victim or to have a family member impacted by a driver who causes harm. There has to be the harshest penalties when that harm could be so easily avoided by not drinking, not taking drugs or simply not getting in a motor vehicle after drinking or taking drugs. I have said this in this place before and many road safety experts have said it: a motor vehicle is a lethal weapon. Someone travelling down a highway at 40 kilometres an hour is potentially a lethal weapon, let alone someone travelling at 100 or 110 kilometres an hour, or indeed even faster. It is not sufficient for the Minister for Police to say that the government is looking at it. How long does it take to look at it with all the resources she has? We waited all last year for this bill to come before the house and we finally saw it just as the parliamentary sitting year was coming to a conclusion. The bill sat on the notice paper for six months. The government had the last six or eight months—it is probably going on for 10 months—since it introduced the bill to the house, and it only brought it on for debate for the first time last week. During those 10 months, the minister could have come up with something. The minister says that she has met with her constituents Catherine and Michelle Roberts. She could have come up with an amendment to deal with the issue as she believes they want it dealt with, but she has offered us nothing. The minister knows what the issue is. This bill has to go to the upper house. There is still an opportunity to deal with it. Show some heart and compassion; show that it actually counts for something.

I think that people who drink-drive and kill someone, whether it is baby Nate or the Roberts girls' dad or anyone else, should not be allowed the privilege of having their driver's licence reinstated. We see that over and again. Yes, there has been commentary about the inadequate length of sentences, but the minister has done nothing about it. She has now been police minister for four years. The bill has been on the notice paper for about 10 months. The minister could have brought forward some amendments. She has lots of resources. She could have done that by now. There has been no reason for the delay. The only thing that the minister lacks is political will. She is displaying mean-spiritedness because she does not want the member for Hillarys to have any success. It would not be a success for him; it would be a success for everyone in the Western Australian community. Whilst he has been impacted and whilst members have cited various other people who have been victims, sadly, there will be another victim potentially next week, next month, the month after—whenever. As night follows day, there will be another victim. Chances are it will be before the end of this year. It will occur, and then people will ask why the law was not changed. Why was the amendment of the member for Hillarys not accepted? Members opposite should not accept this lack of action from the minister. She has dillydallied on this. People's lives are more important than this, and this issue is more important than some petty politics and vindictiveness directed towards the member for Hillarys.

*Division*

Amendment put and a division taken, the Acting Speaker (Mr P. Abetz) casting his vote with the noes, with the following result —

Ayes (19)

| | | | |
|---|---|---|---|
| Dr A.D. Buti | Mr W.J. Johnston | Mr J.R. Quigley | Mr P.C. Tinley |
| Mr R.H. Cook | Mr D.J. Kelly | Ms M.M. Quirk | Mr P.B. Watson |
| Ms J. Farrer | Mr F.M. Logan | Mrs M.H. Roberts | Mr B.S. Wyatt |
| Ms J.M. Freeman | Mr M.P. Murray | Ms R. Saffioti | Mr D.A. Templeman *(Teller)* |
| Mr R.F. Johnson | Mr P. Papalia | Mr C.J. Tallentire | |

Noes (31)

| | | | |
|---|---|---|---|
| Mr P. Abetz | Mr J.M. Francis | Mr S.K. L'Estrange | Mr D.C. Nalder |
| Mr F.A. Alban | Mrs G.J. Godfrey | Mr R.S. Love | Mr J. Norberger |
| Mr I.C. Blayney | Mr B.J. Grylls | Mr W.R. Marmion | Mr D.T. Redman |
| Mr I.M. Britza | Dr K.D. Hames | Mr J.E. McGrath | Mr A.J. Simpson |
| Mr G.M. Castrilli | Mrs L.M. Harvey | Ms L. Mettam | Mr M.H. Taylor |
| Mr V.A. Catania | Mr C.D. Hatton | Mr P.T. Miles | Mr T.K. Waldron |
| Mr M.J. Cowper | Mr A.P. Jacob | Ms A.R. Mitchell | Mr A. Krsticevic *(Teller)* |
| Mr J.H.D. Day | Dr G.G. Jacobs | Dr M.D. Nahan | |

Pairs

| | |
|---|---|
| Ms S.F. McGurk | Ms W.M. Duncan |
| Mr M. McGowan | Ms E. Evangel |
| Ms L.L. Baker | Mr N.W. Morton |

**Amendment thus negatived.**

**Mrs M.H. ROBERTS**: Clause 23 amends section 59 of the Road Traffic Act by inserting a reference to proposed new section 59BA(1), and I see that clause 24 inserts new section 59BA. The explanatory memorandum advises that in considering clause 23 we need to refer to clause 25 for comments on the careless driving amendment package, and states —

> This clause inserts the new offence of 'Careless driving causing death, grievous bodily harm or bodily harm' inserted by clause 25 of this Bill as an alternative verdict on the summary trial for the offence of 'Dangerous driving causing grievous bodily harm'.

In the notes on clause 25, the minister refers to some coronial inquiries. The explanatory memorandum states —

> In recent years the Coroner of Western Australia has made comment that instances of careless driving that result in death or serious injury should be liable for a criminal sanction.
>
> Specifically in 2011, —

This is some five years ago —

> the Coroner in his findings into the death of Mr Jeremy Armstrong called for an alternate charge which would recognise that the standard of driving was below that which should be expected of a reasonably prudent driver and that as a result of that driving a person died or was injured.

It then goes on to state —

> In order to bridge the gap between the dangerous driving and careless driving provisions, this clause inserts a summary offence to apply where a motor vehicle is involved in an incident occasioning death, grievous bodily harm or bodily harm to a person other than the driver and the manner of driving, at the time of the incident, was careless.
>
> This offence carries a penalty of a fine of 720PU ($36,000) or imprisonment of up to 3 years and disqualification from holding or obtaining a drivers licence for a period not less than 3 months;

It says "This offence" and I am guessing that is the dangerous driving offence not the careless driving offence, because there is a reference in the notes to 720 penalty units, $36 000, or imprisonment of up to three years for "This offence", whatever the offence is. When I look down towards the end of those notes on clause 25, it states —

> The offence of 'Careless driving' (section 62 RTA) is an alternative verdict on the trial for this offence.

Also, a reference at clause 27 in the notes states that the penalty for careless driving has been increased from 12 penalty units or $600 to 30 penalty units equalling $1 500. Can I get some explanation of what this offence is? I fully agree with the coroner's recommendation of some five years ago that there needs to be an alternative

charge and an alternative penalty, but I wonder whether the minister could provide some clarity on the questions I have raised.

**Mrs L.M. HARVEY**: Clause 23 provides for the new offence of careless driving causing death, grievous bodily harm or bodily harm to be considered as an alternative verdict against an offender who is charged with the offence of dangerous driving causing death or grievous bodily harm.

Basically, including it after section 59(4) means that it will state that in the summary trial of a person charged against this section, the person may, instead of being convicted of that offence, be convicted of an offence against section 59BA(1). Proposed section 59BA(1) provides the new offence and will be inserted with the amendment in clause 25. That offence is careless driving causing death, grievous bodily harm or bodily harm.

**Mrs M.H. ROBERTS**: To provide clarity and so that we can see what all the relativities are, can the minister advise us of the current penalty, in either fine penalty units or imprisonment, for dangerous driving resulting in death or serious injury? Can she also explain what the alternate verdict is by way of penalties?

**Mrs L.M. HARVEY**: The penalties are defined in section 59(3), which reads —

> (3) A person convicted on indictment of an offence against this section is liable —
>
> …
>
> … 20 years, if the person has caused the death of another person; or
>
> … 14 years, if the person has caused grievous bodily harm to another person;
>
> or
>
> (b) in any other circumstances, to a fine of any amount and to imprisonment for —
>
> (i) 10 years, if the person has caused the death of another person; or
>
> (ii) 7 years, if the person has caused grievous bodily harm to another person,

The penalties are outlined in section 59(3). There is a summary conviction penalty outlined in section 59(1)(b). A summary conviction penalty in a case in which the incident does not occasion the death of another person is imprisonment for three years or a fine of 720 penalty units; and, in any event, the court convicting the person should order that he be disqualified from holding or obtaining a driver's licence for a period of not less than two years.

**Mrs M.H. ROBERTS**: Can the minister clarify the penalty for the alternative verdict? Is that the 720 penalty units, $36 000, or up to three years' imprisonment? If not, what does the penalty represent?

**Mrs L.M. HARVEY**: In effect, the maximum penalty for a person convicted under the new offence in proposed section 59BA is three years' imprisonment or a fine of 720 penalty units and disqualification for a period of not less than three months.

**Clause put and passed.**

**Clause 24: Section 59A amended —**

**Mrs M.H. ROBERTS**: According to the explanatory memorandum, clauses 23 and 24 do exactly the same thing. Why does the explanatory memorandum make identical comments about the two clauses?

**Mrs L.M. HARVEY**: It is because of the difference between dangerous driving and careless driving. Dangerous driving causing death, grievous bodily harm or bodily harm are detailed in separate provisions of the Road Traffic Act. We have one careless driving offence for causing death, grievous bodily harm or bodily harm. In effect, we want this careless driving offence to be an alternative verdict for the offences of dangerous driving causing death, dangerous driving causing bodily harm or dangerous driving causing grievous bodily harm; therefore, we need reference to the new offence in the two clauses for the separate offences under section 59.

**Mrs M.H. ROBERTS**: Finally, can the minister outline to the house the difference between dangerous driving and careless driving?

**Mrs L.M. HARVEY**: That is indeed the reason for bringing in this alternate verdict. In 2011, the State Coroner, in his findings into the death of Jeremy Armstrong—as the member referred to before—called for an alternate charge that would recognise that the standard of driving was below that which should be expected of a reasonably prudent driver, and that as a result of that driving a person died or was injured. Ultimately, this is a new offence. The reason bodily harm, grievous bodily harm and death have been pulled together in the one offence is to allow the court to determine the level of carelessness and whether it should fall at the lower end of the scale or the upper end of the scale. Currently, the gap between dangerous driving causing death, and careless driving where a death may have been caused, is significant. At present, a careless driving offence carries

a penalty of only $600. We have introduced the opportunity for the court, in preferring this as an alternate verdict, to come in with a penalty of imprisonment for up to three years, a fine of up to 720 penalty units, and disqualification for not less than three months. The threshold of dangerous and carelessness needs to be determined more effectively by the court, and that is our intention in bringing this new offence to the Parliament to consider.

**Mr R.F. JOHNSON**: The minister said that it is up to the court to determine the difference between careless and dangerous driving. Frankly, that is not the case at all. This Parliament makes the laws, not the courts. The courts interpret the laws that we lay down. I have some concerns about this clause. As I understand it, the minister has pulled in this offence of careless driving, such as if a person is distracted. That means, Mr Speaker, that if you are driving your vehicle and you do not like the music that is being played on the radio and you turn it off, that is a distraction, and, if you cause an accident, you could be done for careless driving and be sent to prison under this clause. Think about that. Is that really what we are looking at? The minister wants to put drivers in prison for turning off their radio or for being distracted. However, the minister has no intention of doing anything about drivers who get drunk or take drugs and kill someone.

Members need to think about this particular clause very carefully. The minister is asking members to agree to what is quite a draconian piece of legislation. I assure members 100 per cent that I feel sorry for anyone who is killed or suffers grievous bodily harm through the actions of a careless driver. However, we need to stop and think about whether this clause should apply to a driver when no drugs or drink are involved and the driver has simply been distracted. A classic case is the kids are screaming in the back of the car and the driver is distracted. That happens all the time. Some people drive off without paying for their petrol because the kids are screaming in the back of the car. We have seen that sort of case once or twice. That is what happens in life. Do members know what I mean? Would we want to send a driver to prison if they were genuinely distracted and caused grievous bodily harm to another person? I do not think we would, although we might want a massive penalty to be imposed, such as banning them from driving for a long time, or fining them thousands of dollars, because we need to match their behaviour with an appropriate penalty.

The current penalty is weak. It is not strong enough. I accept that 100 per cent. However, is it right to send a person to prison for three years when they have made an error of judgement in their driving? There is no intent to break the law. There is no intent to act irresponsibly. How many times have people in this chamber turned down the radio or changed the channel from 6PR or ABC, or vice versa? I am sure most people have done that if they think a particular program is coming on. That is a distraction. If the person happens to cause a dreadful accident, yes, of course it is bad, and I do not have a lot of sympathy for those people. However, I do not think I would send them to jail, certainly not for three years or more. I might send them to prison for three months or six months, give them a huge fine, and take away their driver's licence—punish them in that way. What are we becoming—a police state? A person may be genuinely distracted—not some furphy that someone wants to put up—with no intent whatsoever to break the law.

Members, once again, think carefully. This minister is trying to sound and be tough, but it will not work because the courts will not see this. They will not interpret this clause of the legislation in the way that the minister thinks they will. We cannot dictate to the courts—not in a fit. We can lay down the legislation and all hope that the courts will take note of that legislation, but they will not do so if they think it is basically unfair and goes against human rights. They will not do it.

Look at the sentences the courts have been handing down for those drivers who have been drunk or on drugs and killed somebody. They have barely given them three years, yet those drivers have purposely gone out and got drunk or taken drugs or evaded police pursuit or driven recklessly. Those things are done on purpose by drivers who know what they are doing, yet the minister wants to send some poor devil who gets distracted by the kids in the back shouting and hollering to prison for three years. Is that right?

**Mr J.R. QUIGLEY**: I rise to agree with the member for Hillarys that the legal test for dangerous driving has been well enunciated by the High Court. I feel embarrassed speaking to you, Mr Speaker, because you would know this so well from your legal practice. When a driver's conduct is viewed objectively and could cause a danger to any road user, it is deemed to be dangerous driving. It has often been said that if we were in a helicopter observing a vehicle from above and objectively judging the manner in which it is being driven, the danger would become readily apparent if the driver was driving dangerously. The test would be quite lucid and readily apparent. Careless driving is another thing, of course. As the member for Hillarys rightly puts, a moment's inattention can amount to careless driving. A pilot in a helicopter may be looking down at a vehicle on the road doing 45 kilometres or 50 kilometres an hour in a 60-kilometres-an-hour area. The sober driver is driving cautiously and carefully but is momentarily distracted by something happening outside the vehicle. For example, if a dog or a child runs on the footpath towards the road, the driver may look away from the road and

then collide with the car in front of them when the car was emergency braking. Someone observing that vehicle from above would not apprehend it as being driven in a dangerous manner. There is no intention there. There is no mens rea there. No quality of the person's conduct would warrant imprisonment.

The instinctive reaction of a mother in a car who suddenly heard their child in the baby seat behind them let out a shriek of distress would be to momentarily look over her shoulder without even thinking. If at that moment something else happened in the environment that caused a crash, it is unimaginable and unthinkable that this Parliament would set up a law that would render such a person liable to imprisonment. I can understand that could be the case with dangerous driving because there is conduct to be desisted from. Someone in a helicopter could see the car passing on double white lines, going wide around corners and perhaps jumping a red light, and that does not get to the presumptive sections of the bill about the ingestion of alcohol. Just whilst in control of the vehicle, the person could desist from dangerous driving at any time. But to think that this Parliament would pass a law such that a moment's inattention of an otherwise blameless person—a mother instinctively reacting to a child screaming behind her before she gathered her senses and brought her eyes back front and centre—would then be rendered liable to three years' imprisonment is an error by this Parliament. I take on board what the coroner said—that there can be a stepped up penalty from careless driving in sections 61 or 62 of the act, and we could have a stiffer penalty than careless driving. But to then render a person possibly liable for imprisonment —

**Mr R.F. Johnson**: Three years.

**Mr J.R. QUIGLEY**: — for three years is harsh and unusual. I will say more about this when we deal with the amendments to follow.

**Mr D.A. TEMPLEMAN**: I am very keen to hear the member for Butler's discourse.

**Mr J.R. QUIGLEY**: I will also say more about this when we deal with the insertion of proposed section 59BA, which I am absolutely stunned at in view of the minister's earlier comments in this chamber.

Leaving that aside for a moment, I could perhaps understand increasing the level of suspension from three to six months in these circumstances. To render a person who has no intention of driving a vehicle in other than a careful manner, a person who is momentarily distracted—I am not now talking about someone who is using a mobile phone or texting, which, in fact, could be dangerous driving; I am talking about an outside distraction such as a child running on the footpath or a baby screaming in the back seat or anything that momentarily distracts the person, leaving them liable to three years' imprisonment—is a travesty and is just coming from someone trying to be tough.

I note that as long ago as 19 April 2015 the government put out its big presser to say that it will get tough on careless driving—"WA drivers set to be hit with a new careless driving offence". The government can put this offence in and up the period of suspension, but to render offenders liable for three years' imprisonment, I could not agree more with the member for Hillarys. Imagine this person ending up in the women's prison and asking, "What did you do?" They could be told, "Well, I got drunk and I bashed someone up at a nightclub" or "I stabbed a police officer in the face with a broken glass" or "I bit a police officer". Just think of that. Think of the mandatory terms that the government brought in for deliberately injuring a police officer—for biting a police officer. This penalty is not as heavy as this. Someone in prison could say, "I bit a police officer during the course of arrest and really injured him." The other person says, "Think about me. I looked at a dog that I thought was running onto the road and when I looked back, I had a crash and I am liable for three years."

**Mr R.F. Johnson**: Member, you said earlier that if you use your phone, if you text or whatever else, that is illegal anyway. That is more than simply a distraction; you are breaking the law by doing that.

**Mr J.R. QUIGLEY**: That is what I said.

**The SPEAKER**: Thank you. Through the Chair.

**Mr J.R. QUIGLEY**: I am just taking the interjection.

**The SPEAKER**: Hansard cannot follow. It is very difficult.

**Mr J.R. QUIGLEY**: I will pause and let the member go because he is very lucid.

**The SPEAKER**: If you want to sit down, you sit down.

**Mr J.R. QUIGLEY**: I agree with the member for Hillarys on all points. As I said, texting would be different from hearing a baby screaming in the back and a mother instinctively turning her head momentarily and thereby rendering herself to a term of imprisonment for three years. It is ridiculous when we look at the other penalties in this bill and in the Criminal Code. There has to be proportionality. The person who bites a police officer during arrest or pokes him in the eye or breaks his leg —

**Mr R.F. Johnson**: Intentionally.

**Mr J.R. QUIGLEY**: Yes—could end up with a lot less than a mother who looked over her shoulder when her baby screamed. It loses all sense of proportionality. It is just a race to say, "We're tough." It is all inconsistent because when we go back to those requirements to report an accident, the government lowered the threshold. The member for Hillarys was not here. It lowered the threshold and said, "You can do that at midnight on an ICWA portal. Even if it involves death or grievous bodily harm, we're happy with that, but we're going to get these mothers or any other driver who is just momentarily distracted." I agree with the member for Hillarys.

**Mrs L.M. HARVEY**: First, I want to clarify that the example the member for Butler used of the dog running out on the road is probably not the best example to illustrate a driver not driving with due care and attention because the dog could be deemed a hazard on the road for the purposes of that example. This is not a mandatory penalty. The only mandatory component of this penalty is the disqualification from holding or obtaining a driver's licence for a period not less than three months. This has a penalty of up to three years' imprisonment and up to 720 penalty units. We are putting it to the court to determine where those penalties should fall with respect to the degree of negligence, the degree of carelessness and whether we are looking at bodily harm, grievous bodily harm or death resulting from the driver not giving the right level of due care and attention to their driving.

I just want to make it abundantly clear that this is not a mandatory term of imprisonment. We are putting the option of a term of imprisonment so that when this is viewed by the court as an alternative verdict to the other more serious offences of dangerous driving causing death et cetera, there is an ability for the court to impose a custodial penalty if it is determined that the level of culpability or negligence of the driver is at the high end of the scale as opposed to the low end of the scale.

We expect drivers who are granted the privilege of holding a driver's licence to have a level of skill and to pay attention to what they are doing as they are driving a motor vehicle. This careless driving offence is here to ensure that there are a range of penalties available to the court for drivers who do not meet that standard but may not reach that higher standard of a dangerous driving offence. That is what we are proposing. It is not a mandatory term of imprisonment by any stretch.

**Mr J.R. QUIGLEY**: I would like to respond to a couple of the minister's comments. First, she referred to a person distracted by a dog on the side of the road —

**Mrs L.M. Harvey**: You said on the road.

**Mr J.R. QUIGLEY**: I said beside the road. She said that was a poor example and would not constitute careless driving; it would be regarded as a hazard. The last policeman I defended was an officer from Midland Police Station, who, together with his partner, responded to a call from the Mt Helena Tavern where it was believed an armed offender was on the premises. I cannot remember his name now. The sergeant at the ministerial table will probably remember his name well—his passenger was an English officer who had come out and joined the Western Australian police force. Going through the area of the John Forrest National Park at night-time, with shadows and lights, he was distracted because he thought he saw a kangaroo. He missed two things: first, he missed the passenger's call that the emergency had been called off, but there was a blind spot on the hill because it was before digital radio, and, more importantly, he missed a slight turn in the road and impacted a tree. He was distracted momentarily by what he believed to be a kangaroo. There are danger signs warning of kangaroos in John Forrest National Park. He was charged with dangerous driving causing death. The minister's sergeant is probably confirming it. The example that I put forward is not an inappropriate example at all. Being distracted by something moving towards the road, or what a person believes is moving towards the road, can easily constitute careless driving, and I refute what the minister says.

When we look at the question of proportionality, let us look at reckless driving. Granted, the person has not actually killed anyone, but reckless driving is intentionally driving in a dangerous manner. That is not that someone has adjudged the person to be driving in a dangerous manner; they have gone out there with the specific intent of putting other people in danger whether or not they have killed them. For a first offence, it is a fine of 120 penalty units or imprisonment for nine months. How does that square with the mother who is momently distracted? I am not talking about inflicted penalty; I am talking about statutory penalties in the act. How does that square with that? It cannot; it is disproportionate that a person in those circumstances who is momentarily distracted could suddenly be rendered liable to three years' imprisonment. It is wrong.

**Mr W.J. JOHNSTON**: I am interested that we are including this new provision of careless driving causing death, grievous bodily harm or bodily harm as an alternative. A person could be charged under sections 59 or 59A and then get convicted by the courts under proposed section 59BA.

Several members interjected.

**The SPEAKER**: Thank you; that is enough.

**Mr W.J. JOHNSTON**: It appears that we are now allowing the courts to convict a person who the prosecuting authorities think has been involved in dangerous driving. Currently, the alternative convictions are found in sections 61 and 62, which relate to dangerous driving obviously not causing death and reckless driving. Now we are allowing the courts to convict for careless driving. There is an important difference here. The minister used the term "negligent" in her explanation on the question about careless driving from the member for Butler. As I understand it, if a person is negligent, they cannot be careless, because negligent is a higher standard than careless. Being careless is someone making a mistake, whereas being negligent is someone failing to take proper action. It does seem to allow the courts to convict people of a mistake when the prosecuting authorities are arguing that they have been involved in something higher than a mistake. Given that, as the minister emphasised, we are not providing for a mandatory jail sentence but rather a possible jail sentence, it seems very unlikely that a court will send someone to jail for a mistake, which is what "careless" is about. Careless is not about a deliberate action, so it would be a real surprise for a court to send somebody to jail for a mistake, particularly when one understands what we are doing. We are providing the courts with a lesser opportunity. A person is brought to the court by the prosecuting authority for doing something dangerous causing death or bodily harm, but we are now providing an alternative. The person goes to court, pleads not guilty, the trial goes ahead and they are convicted, and the court now has this option of saying, "Oh well, it was actually a mistake that led to the problem—carelessness". We are providing this possible imprisonment, but it is unlikely to be used because the court is unlikely to send someone to jail for a mistake as opposed to a deliberate decision. It seems that we are reducing the penalties of old for dangerous driving causing bodily harm. It seems that we are now giving the courts a way out of convicting people for the more serious offence of dangerous driving causing bodily harm, even on the facts presented by the prosecuting authorities. Even if the prosecuting authorities prove everything, the court will say, "Oh well, we think it was a lesser offence and therefore we convict them under 59BA rather than 59A", even if all the facts are proved.

**Mrs L.M. HARVEY**: Just to clarify, "neglect" is not paying attention, so negligence is at the lower end of culpability, if you like. It is not envisaged that somebody making a simple mistake could expect to receive the maximum end of this penalty. This penalty and alternative verdict is not intended to be an easy way out for those who are charged with the higher offences of dangerous driving causing death or grievous bodily harm, or bodily harm. I understand that the way this will work is that should the person be looking at being acquitted of the more serious offence, the alternative verdict can then be considered with the range of penalties that we are proposing, being potential imprisonment of up to three years, a penalty of up to 720 penalty units, and licence suspension of three months. It comes back to the test of what is reasonable. Is the driver's behaviour at the higher end of culpability, or erring towards the lower end of negligence? We believe that the courts, in weighing up the circumstances of these individual cases, will take the opportunity, if you like, to set some precedents around when the thresholds for dangerousness, negligence and culpability come in. At present, there really is not an opportunity for the court to award anything other than a $600 penalty for an offender who is acquitted of the more serious test of dangerous driving or reckless driving. There are lots of precedents around that threshold test but there is not a lot of precedent around careless driving because the penalty is only $600. This will create some good case law and provide that threshold test and hopefully send the message out there, with regard to road safety, that we expect drivers to take driving seriously and to pay a reasonable level of care and attention to their duties and responsibilities when they are behind the wheel of their vehicle. It was implied earlier that if alcohol is involved, this could potentially be an ultimate verdict to an offence of dangerous or reckless driving. It cannot be. This careless driving offence cannot be considered as an alternative verdict. Once alcohol is involved, generally that test of dangerousness or recklessness is met.

**Dr A.D. BUTI**: I cannot recall what the minister said in answer to the member for Butler. Was she saying that negligence forms part of the careless driving range?

**Mrs L.M. HARVEY**: Negligence is not paying attention.

**Dr A.D. Buti**: Is the minister saying that negligence is not paying attention?

**Mrs L.M. HARVEY**: Negligence or neglect is not paying attention, so, yes, effectively; some levels of negligence could be considered.

**Dr A.D. BUTI**: Is the minister saying that negligence comes within proposed section 59BA, which refers to "without due care"? I suppose due care is considered by a reasonable person. If that is the case, will it then depend on who is the driver? A young driver will not have the same standard of skill as an experienced driver, an ambulance driver or professional driver. Do we have to also consider who the driver is?

**Mrs L.M. HARVEY**: Member, that is why we have brought the careless driving causing death, grievous bodily harm or bodily harm into one offence with the range of penalties being up to three years' imprisonment and

720 penalty units with that licence suspension of three months. We want the court to consider where these offenders should sit within the spectrum.

**Mr W.J. JOHNSTON**: I want to clarify this because section 59A of the principal legislation states —

> (1) If a motor vehicle driven by a person …
>
> …
>
> (bb) while under the influence of alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle;

That is an offence under "Dangerous driving causing bodily harm". We are now allowing the courts, notwithstanding that the prosecution authorities have brought the matter to the courts as a person driving under the influence of alcohol et cetera, to convict a person under the "careless" category. That is contrary to what I understood the minister said a little while ago; that is, if it involves drugs, that is not an option. But it is now an option because they can be convicted under section 59A(4) and proposed new section 59BA(1) whereas sections 61 and 62, the alternatives, are dangerous driving. Careless driving is already an option but that would be a much lesser sentence. It seems that we are encouraging the court to give a lesser penalty. One would be unlikely to get a conviction under section 62 if someone is caused bodily harm, but now the minister is saying that even with bodily harm they may be said to have been careless and not dangerous. It seems that the minister is inviting the court to provide a lesser penalty even when the facts are proved.

**Mrs L.M. HARVEY**: The member used the example of section 59A, "Dangerous driving causing bodily harm". To be clear, while under the influence of alcohol, drugs, or alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle, if the elements of that offence are met, the person would be convicted of that offence and face the penalties consistent with that offence. Should the elements of that offence not be proved and the person will be acquitted, at that point, the charge of careless driving could be considered as an alternate verdict. That is how this provision would work.

**Dr A.D. BUTI**: Subsection (3) of proposed section 59BA mentions that a person charged with an offence under subsection (1) may, instead of being convicted of that offence, be convicted of an offence under section 62, which is the careless driving offence. I wonder why. If a person is charged under subsection (1), why would they not be convicted of that offence and instead be convicted of an offence under section 62? What is the difference?

**Mrs L.M. HARVEY**: I am advised that in those circumstances, should the person be charged under proposed section 59BA and not be able to prove the incident occasioning the death of, grievous bodily harm to, or bodily harm to another person, then it would go back to the simple offence of careless driving under section 62, which carries a penalty of 30 penalty units.

**Clause put and passed.**

**Clause 25 put and passed.**

**Clause 26: Section 59B amended —**

**Mr J.R. QUIGLEY**: I have a couple of questions for the minister. Besides an amendment to subsection (2), this clause principally inserts proposed subsection (7). It reads —

> (7) In any proceeding for an offence against section 59BA(1) it is a defence for the person charged to prove that the death, grievous bodily harm or bodily harm occasioned by the incident was not in any way attributable to the level of care and attention with which the motor vehicle was driven.

The subsection does not lay out a standard of proof. My first question to the minister is: when the section provides the defence in which it is for the accused person to prove certain things, to what standard of proof must the accused reach or discharge to affect the defence?

**Mrs L.M. HARVEY**: In order to exercise this defence, the person would need to prove on the balance of probabilities that the death, grievous bodily harm, or bodily harm occasioned by the incident was not in any way connected to the level of care and attention with which the motor vehicle was driven. It is a balance of probabilities.

**Mr J.R. QUIGLEY**: I am surprised that the minister would advance that argument or even introduce that defence in this manner given her submissions to this chamber on the amendments to the Dangerous Sexual Offenders Legislation Amendment Bill. The Labor opposition proposed an amendment that, through an obligation upon a serious dangerous sex offender, he could convince the court on the balance of probabilities that he would comply with the terms of a supervision order. It was the minister who said that this would confuse the court by shifting the burden back onto the accused and not only shift the burden back onto the dangerous sex offender, but do so at a different standard from what the Office of the Director of Public Prosecutions had to do in an earlier section. With respect, it could appear as though, or a lot of people could accuse the minister of, or

conclude that, the minister is practising hypocrisy. When we came up with an amendment to the Dangerous Sexual Offenders Legislation Amendment Bill that shifted the burden back to the serious dangerous sex offender—might I add, one that political commentators welcomed and applauded and said was a sensible suggestion, as the minister probably would have read in the newspapers—the minister berated it because shifting the burden would confuse the court. In what way would that confuse the court more than in this proposed subsection? On the minister's analysis, why is the proposed subsection not confusing?

**Mrs L.M. HARVEY**: Proposed subsection (7) is consistent with section 59B(6) of the Road Traffic Act. It falls into the current construction of the legislation and that is why it has been put there.

**Mr J.R. QUIGLEY**: I understand that; I can read. However, the minister did not put in subsection (6). She intends to put in proposed subsection (7) in direct contradiction to the propositions she advanced in this chamber: that it would be too confusing for a court to throw the burden back onto a serious dangerous sex offender to convince a court on the balance of probabilities, if members recall, that he would comply with the terms of the supervision order. She said that would be wrong; it would just confuse the courts. On that argument, why is this any less confusing? I know it is in subsection (6), but why is it any less confusing?

**Mrs L.M. Harvey**: I do not believe it is appropriate to compare those two scenarios because they are completely different.

**Mr J.R. QUIGLEY**: Perhaps some could conclude—not I, but others reading *Hansard*—that that is a confession to hypocrisy. However, to go on—the minister says that is not confusing—how do we assess that when she says that someone must prove on the balance of probabilities that death, grievous bodily harm or bodily harm caused by the incident is not in any way attributable to the level of care and attention with which the motor vehicle is driven? Can the minister please give a practical example of the circumstances in which a person driving without due care and attention is involved in a crash in which the other driver or the passenger dies and that death or injury is not attributable to the level of lack of care?

**Mrs L.M. HARVEY**: A possible scenario would be a person who runs out onto a road and the driver runs that person down and kills them. It could not be proved that there was a lack of care and attention on behalf of the driver to avoid that collision and the subsequent consequence for the pedestrian. It may be that even though the facts are established—for example, that the driver was looking behind—the driver might have been able to prove that he was looking forward and that his driving had not resulted in his culpability in being unable to stop to avoid hitting the pedestrian, regardless of whether or not he was looking. That is one possible scenario.

**Mr J.R. QUIGLEY**: That is gobbledygook, with respect. The minister looked as though she was panicked. The driver might have been looking back, or the driver might have been looking forward—we do not know what the driver was doing, and the minister does not know because she is just coming up with some explanation that makes no sense. She does not tell us, in her example, where the driver was looking. Is she suggesting that in the case of a driver driving along the road, obeying the law, looking forward and someone runs out in front of them, that that driver is guilty of careless driving? That is not her suggestion, is it?

**Mrs L.M. HARVEY**: It is very difficult to come up with scenarios as the member is asking for. I say that because, previously, people charged with careless driving have not received any penalty other than the $600 fine, which is the current case. Part of the reason for putting this defence in there is to maintain some consistency with the construction of the existing act. As I have said, it is a new offence. We have left the range of penalties broad, and we have put in the defence so that it is consistent with the construction of the act. Ultimately the court will take into consideration the circumstances of each individual case. It is difficult to articulate scenarios because this is a new offence, and people have not been charged with this offence previously. We do not have circumstances to hand of when this offence might serve as an alternate verdict, or when it might fail, for example, in response to a defence put forward by an offender. I have done my best to articulate a scenario, on the advice of my advisers.

**Mr J.R. QUIGLEY**: With respect, what scenario is the minister putting forward? I do not get it. What is the scenario the minister is putting forward? I will let her speak to the sergeant; he might be able to help.

**The SPEAKER**: Member for Butler, you speak and then the minister can answer you.

**Mr J.R. QUIGLEY**: Is the scenario the minister is putting forward that if a person driving down the street looking forward, strikes a person who runs out in front of their car, that constitutes careless driving? Is that the scenario the minister is putting forward?

**Mrs L.M. HARVEY**: No.

**Mr J.R. QUIGLEY**: When the minister said she put a scenario forward I am trying to see what evil she is trying to capture here, and what is the let out. She has not told us. She says that it is all too difficult; it is just consistent

with the legislation. I know it is in the legislation in relation to dangerous driving, but we are not debating that section at the moment. We are talking about this proposed subsection. Just because it is in a previous section in relation to dangerous driving does not help us. When a court comes to look at a case, the first thing the court does before it turns to the facts, as Mr Speaker knows, is go to the law, and then apply the law to the facts before the court. I am trying to find out what this law means, because it does not make clear sense. I am only seeking an explanation from the minister as to what it means, bearing in mind that she has three advisers to assist her. Is it a defence for the person charged to prove that the death, grievous bodily harm or harm occasioned by the incident was not in any way attributable to the level of care and attention with which the motor vehicle was driven?

The last phrase "was not in any way attributable to the level of care and attention with which the motor vehicle was driven" is presupposing that the vehicle was driven without due care and attention. The words that precede that are "the incident was not in any way attributable to the level of care". In the case of the person who is distracted momentarily and then runs a child over on the road, does the minister say that it was only a momentary distraction? That is a complete defence, because it could not be said that a momentary distraction would kill a child. Is that what we are to conclude? Can the minister offer any scenario that would be reflective of this defence? I press this point because the courts look to second reading speeches and consideration in detail to help them interpret the act.

**Mrs L.M. HARVEY**: It is one possible scenario. I do not know if I will ever have an answer that the member would be satisfied with. A scenario could be that the driver was not watching the road and hit a pedestrian who ran onto the road. The driver could then potentially show that even if he was paying due care and attention, the person still would have been hit, because they had run out on the road. I am advised that is a possible scenario for which that defence could be used. As I said, the defence is in this proposed subsection to maintain consistent construction of the legislation.

**Mr J.R. QUIGLEY**: With respect, that is imponderable, is it not? The minister is saying that even had the person been looking, they could not have avoided that pedestrian, so it could not have been careless driving in any event. That is imponderable, is it not? We were talking earlier about the mother who was momentarily distracted by a child's cry of distress and momentarily looks away and hits a pedestrian. The minister was happy that that would incur a possible sentence of three years' imprisonment. Now, the minister is saying that if the lack of attention was not that critical to the person's death, then it is not punishable under the act. That does not make sense, does it?

**Mrs L.M. HARVEY**: I have just been advised of another scenario in which a driver has pulled out from a side street, looking in the direction of where they would expect traffic to come from, and has gone around a corner and collided with a woman who was standing smack-bang in the road on a rainy night, and she has died of her injuries. However, the driver was acquitted because there was no way he could have avoided collision with that individual. Scenarios exist in which a defence like this could be used. They are yet to be demonstrated because it is a new offence

**Mr J.R. QUIGLEY**: I did not follow the minister. The driver is coming out from a side street; I follow that. There is a woman standing in the middle of the road and he runs her down, but the minister is saying that is not careless. How does that work? Can I quote the minister on this? A woman is standing in the middle of the road, the driver pulls out from the intersection. Can I quote the minister if I get pulled up by a policeman for doing this? If I pull out from an intersection and hit a pedestrian or a car in the middle of the road can I say that the minister told me that was not careless? Is the minister serious?

**Mrs L.M. HARVEY**: This is an actual case, member.

**Mr J.R. QUIGLEY**: What actual case is it? I am sick of the minister saying this is an actual case. What actual case is it? This happened during the mandatory sentencing debate. The minister said all these judges were not doing the right thing, and when I pressed the minister in this chamber to name them, she did not name one. What is the case the minister is referring to so that we can consider it to see whether this proposed subsection is properly drafted? It is simple. The minister has the sergeant there. Could the minister name the case, please.

**Mrs L.M. HARVEY**: It is a case that Sergeant Matthiessen was involved in.

**Mr J.R. QUIGLEY**: That is good, yes. However, I cannot refer back to that case. A search on the database for Sergeant Matthiessen will only give me, I am sure, policeman of the year, or something like that, as the return. It is unlikely to give me the case citation or whatever else I need to debate this clause. In the case in which Sergeant Matthiessen, the minister's adviser, was involved, could the minister more accurately describe the circumstances, please?

**Mrs L.M. HARVEY**: Member, I think we have delved into this enough at this point in time. I am not going to press Sergeant Matthiessen for the details of that case. It was some time ago. I am just speaking to a possibility when that defence could be used. I understand that people are feeling a bit silly at the moment, with all the giggling around the place—it is very late. However, this is a very important piece of legislation. As I have said, it is a new defence. There is not case law out there for me to quote how this defence could be used. We are debating possible scenarios from other cases relating to other defences, and ultimately the courts will set the case law with this new defence.

**Mr J.R. QUIGLEY**: With respect, that is not right. In relation to dangerous driving causing death, exactly the same provision applies. That is not up for debate in this chamber this evening, because it is not an amendment. Exactly the same applies. The minister is saying there are legal principles and this is being done in accordance with the act. I am trying to find out the circumstances under which this defence would be enlivened. The minister has not been able to cite even hypothetically an example. I am trying to find out the factual circumstances under which proposed subsection (7) would be enlivened to the degree of securing a not guilty verdict.

**Mrs L.M. HARVEY**: Previously the member has said that this will put an onerous consequence onto a poor distracted mother who was just turning around to see what her baby was crying about. In effect, this defence provides a safety valve for an offender who has been charged with this offence in the event that they can prove on the balance of probabilities that the death, grievous bodily harm or bodily harm was not a result of their failing to drive with due care and attention. It is a safety valve. That is what it is there for. It is consistent with other sections of the act, and that is why it is there.

**Mr J.R. QUIGLEY**: With respect, a mother who looks around and is distracted and runs someone down is guilty of careless driving, is she not? We have been through that before. A mother who is driving and is not looking where she is going at the time is guilty of careless driving. What we were debating before was the degree of culpability in terms of penalty. However, it would still be careless driving, would it not?

**Mrs L.M. HARVEY**: It would still be careless driving. However, this is linked to causality of the death, grievous bodily harm or bodily harm if that is attributable to the level of care and attention with which the motor vehicle was driven.

**Mr W.J. JOHNSTON**: But that is the confusing thing, minister. Is the minister saying that effectively the defence is that the person would have been killed even if the driver had been paying attention? That is not quite what the minister has said, because it seems to us that she has said that if there is carelessness, someone is guilty. Does the minister see what I mean? It is an offence of carelessness, so it cannot be related to the driver's attention if they are careless. It can only be something else that must be able to be proved. Is the minister saying that someone can prove, regardless of whether they were careless, that they are not guilty because the person walked in front of the car?

**Mrs L.M. HARVEY**: I go back and say one more time that if the lack of care in driving has led to the death, grievous bodily harm or bodily harm of the victim in these circumstances, the careless driving offence of causing death, grievous bodily harm or bodily harm would occur. Should the driver be able to prove as a defence that the death, grievous bodily harm or bodily harm caused to the victim was not a result of the lack of care and attention in his driving, he would be eligible for the lesser offence of careless driving, which carries that 30 penalty-unit fine.

**Clause put and passed.**

**Clause 27: Section 62 amended —**

**Mrs M.H. ROBERTS**: I see the minister has an amendment to insert after "penalty" the words "a fine of". I note that the penalty listed in the bill is 30 penalty units. The marked-up version strikes out "Penalty: 12 PU" and inserts "30 PU". I do not know why the words "a fine of" need to be inserted, so perhaps the minister could explain that in moving her amendment.

**Mrs L.M. HARVEY**: I move —

Page 18, line 15 —

After "Penalty:" insert:

"a fine of"

Parliamentary counsel have recommended the insertion of the words "a fine of" because that is consistent with how fines and penalties are now being described in legislation.

**Mrs M.H. ROBERTS**: I have a question. If parliamentary counsel are now recommending this as an amendment, did parliamentary counsel draft this bill or was the bill drafted elsewhere; and, if so, by whom?

**Mrs L.M. HARVEY**: Parliamentary counsel drafted the bill and in checking the bill determined that it was appropriate to move this amendment to clause 27.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Debate adjourned, on motion by Mr J.H.D. Day (Leader of the House)**.

*House adjourned at 12.08 am (Wednesday)*