ROAD TRAFFIC LEGISLATION AMENDMENT BILL (NO. 2) 2015

Consideration in Detail

Resumed from 23 August.

Debate was adjourned after clause 27, as amended, had been agreed to.

Clause 28 put and passed.

Clause 29: Schedule 2 amended —

Mrs M.H. ROBERTS: Clause 29 amends schedule 2 of the Young Offenders Act 1994. Last evening, we had some discussions about the schedules, which I ultimately found on page 157 of the 9 October 2015 edition of the act. Schedule 1 of the Young Offenders Act lists the schedule 1 offences —

- **for which a caution cannot be given, and**
- **which cannot be referred to a juvenile justice team, and**
- **for which a conviction will normally be recorded**

Schedule 2 lists the offences —

- **for which a caution cannot be given, and**
- **which cannot be referred to a juvenile justice team, and**
- **for which a conviction will normally be recorded, and**
- **which may lead to the application of the provisions relating to offenders who repeatedly commit offences resulting in detention**

This is largely summarised in the explanatory memorandum. It advises that in this legislation we are inserting in schedule 2 a new offence for which a caution cannot be given. That offence is inserted by clause 25 of the bill, on which the member for Butler and I made some comments last night. It is the offence of "careless driving causing death, grievous bodily harm or bodily harm." The explanatory memorandum also advises that an amendment is being made to the description in the schedule of the offence created by section 59 of the Road Traffic Act to bring it into line with the description of the offence of "dangerous driving causing death or grievous bodily harm". This seems to apply the new careless driving penalty in full to young offenders without the ability to refer them to a juvenile justice team. Can the minister explain why that is desirable?

Mrs L.M. HARVEY: The decision was made to put this into schedule 2 because we feel the courts should be dealing with this offence, as the outcome has obviously been the death of or grievous bodily harm to a victim as a result of a careless driving offence.

Mrs M.H. ROBERTS: The member for Butler spent some time last evening talking about careless driving offences, and I think I said that one would anticipate, given a person needs to be 17 years of age to have a driver's licence, that we are talking only about 17-year-olds, or is there a context in which it may apply to someone under 17—for example, a 14 or 15-year-old who happened to be driving without a licence?

Mrs L.M. HARVEY: All juveniles could be captured by this if they were driving a vehicle without a licence, so it could potentially capture a juvenile in a stolen vehicle or in any vehicle if their driving behaviour results in the death, grievous bodily harm or bodily harm of another individual and they are charged with an offence of careless driving.

Mrs M.H. ROBERTS: The penalty that was inserted at clause 25 was 720 penalty units, a fine of $36 000 or up to the three years in jail. Is someone demurring from that? Am I right in that or not? I am happy to take clarification by interjection.

Mrs L.M. Harvey: No, you are right.

Mrs M.H. ROBERTS: I think it was the member for Hillarys who raised the issue of what constituted careless driving and how the driver might be adjusting a radio or a child in the back of the car might be screaming out and getting the driver's attention, or there might be some other circumstance. I am sure someone with a fertile imagination could come up with a lot of examples. I am borrowing a little from what the member for Butler said last night when he described a helicopter view, with someone looking at a vehicle from above and determining whether it was careless driving. There could be some incident—who knows, a spider dropping out of the visor, a child screaming, or something happening within the vehicle—that might cause someone to drive in what appears to be a careless way and that might be determined to be careless driving. Under this clause, could a person of 15, 16 or 17 years of age be subjected to up to three years' imprisonment for that?

Mrs L.M. HARVEY: My advice is that that could be the case, but they would still be subject to the conditions of the Young Offenders Act and the Sentencing Act, so the outcome could still be a youth community-based order or some other order given by the court in lieu of a sentence.

Clause put and passed.

Clause 30 put and passed.

Clause 31: Section 64AB amended —

Mrs M.H. ROBERTS: This clause deletes "4 hours" and inserts "4 hours, or 12 hours if the sample was taken under section 66(8B)". I think a lot of people have been calling for this amendment for some years. Would the minister be able to explain the benefits of extending the period to 12 hours?

Mrs L.M. HARVEY: This clause is also subject to the section 66 amendments in clause 34. Extending the time taken for obtaining a sample from four hours to 12 hours gives us the opportunity to take crash blood samples from people in regional and remote areas, and have them still able to be used for evidentiary purposes should there be grievous bodily harm or death as a result of that crash.

Mrs M.H. ROBERTS: Thank you, minister. I would like some explanation of the science here, if possible. We understand that in a breath analysis, the level of alcohol per hundred grams, or whatever the measure is, gives an indication of the blood alcohol reading. Presumably, if someone has a blood sample taken 10 or 12 hours after a crash, it would be at a lower level than it would have been at the time of the crash, or an hour after the crash. Can I ask whether calculations will be taken into account there?

Mrs L.M. HARVEY: I am advised that this provision applies to blood and urine samples. Although the level of alcohol will still be declining, we can still have the ability to detect drugs in blood and urine samples over that period. That is the purpose of it. We can still get a valid reading for the presence of drugs and alcohol in the blood of those people who may have been driving a vehicle that has caused one of these crashes, which has them then falling into the crash blood provisions.

Mrs M.H. ROBERTS: Further on this, minister, I think it is well known that a drug such as marijuana stays in a person's bloodstream and can be detected, potentially, weeks after use. Some other drugs are not readily detected even a day or two after use. Will the mere presence of marijuana be in any way indicative, when a person might say that they had smoked dope a week or 10 days previously and that is why it is still in their system? Is the test really going to be useful for marijuana, or will it be useful for just alcohol, and methamphetamine and maybe some other drugs?

Mrs L.M. HARVEY: I am advised that the detection methods used can detect all drugs—cannabis and methamphetamine, as well as prescription drugs—and that expert witnesses can calculate back to determine when the drug was ingested and how much, according to the way in which it is metabolised in the system.

Mrs M.H. Roberts: Even for marijuana?

Mrs L.M. HARVEY: I am advised, yes.

Mr J.R. QUIGLEY: In the case of drugs, the offence is driving a vehicle whilst impaired to such an extent as to not be in proper control of the vehicle. Is that the case, minister? It is not an offence of mere presence; it is the offence of driving a vehicle whilst being so impaired by whatever drug?

Mrs L.M. Harvey: That is correct, yes.

Mr J.R. QUIGLEY: The detection of a cannabinoid in the blood is not sufficient to secure a conviction. This is sort of directed at the question that the member for Midland asked. It would be confirmation that the person has ingested a drug, but objective evidence must be given by the apprehending officer that at the time the person was so impaired that they could not be properly in control of the vehicle, whereas with alcohol there is a level of presumed impairment after certain levels of blood alcohol content are recorded—.05, .08 and .15.

Mrs L.M. HARVEY: My advice is that expert witnesses these days can give an opinion on the likely impairment of a person depending on the level of drugs in their system. Blood samples would be taken and the level of impairment at the time of the crash would be determined. The expert would determine whether the level of drugs in their system would constitute impairment for the purpose of prosecution under the act.

Mr J.R. QUIGLEY: That is a very interesting answer because from my understanding of the literature, depending on body weight and body fat, which some drugs are stored in, a drug can be present in some people for longer than in other people. If experts can give an opinion on impairment from the level of cannabinoid or amphetamine in the blood, why do we not have in the legislation a threshold point at which impairment is presumed for drugs? Given that the minister is saying that the state of expertise is that an expert witness can give an opinion that at a certain blood alcohol content level a person would be impaired, why do we not have the same presumptive sections for drugs as we have for alcohol?

Mrs L.M. HARVEY: I thank the member. The member is correct in that some of drugs are stored in body fat. However, I am advised that we do not have in the legislation a prescribed minimum level of drugs in the system

that constitutes impairment, because it is different for every drug and it would become overly complex to prescribe that in legislation.

Mr J.R. QUIGLEY: Surely that could be done with the common drugs such as cannabis, methamphetamine—I think ice and methamphetamine are the same?

Mrs L.M. Harvey: They are different forms of the same drug.

Mr J.R. QUIGLEY: With common drugs such as cannabis, methamphetamine, heroin and cocaine, the experts would know what level would render a person impaired to the extent that they are incapable of properly controlling a vehicle. Why do we not have it for those drugs?

Mrs L.M. HARVEY: I am advised that the thresholds for the different sorts of drugs can vary, and that it has not been determined that there is a specific threshold level that would constitute impairment; therefore, the expert witnesses need to take other factors into consideration when determining impairment as a result of ingestion of these drugs. With alcohol, the impairment has been determined, as the member knows, because that is a widely available substance, and it is consistent. With these drugs, there is an inconsistency across the broad spectrum of the range of drugs. I am advised that the ChemCentre has different levels that would constitute impairment in various circumstances, and that is the evidence that is presented to the court in determining impairment should a person be charged under section 64AC of the Road Traffic Act.

Mr J.R. QUIGLEY: This is a relatively new area of enforcement. I have two concerns. One is anecdotally-based, so I could not think the minister can take it anywhere. I am told anecdotally by people in the mining industry that people who go onto mine sites are regularly drug tested. I am told that amphetamines have a relatively short half-life, which I understand refers to the rate at which the drug is metabolised and dissipates out of a person, of less than 12 hours—the minister's advisers might tell her differently—whereas a person might have a detectable quantity of cannabis days and days after they are no longer impaired. I am told that has the effect of pushing people in these industries to harder drugs because they can consume those drugs on the weekend and by Monday morning when they arrive at the mine site they will be relatively clean. Therefore, when we do not have levels in the legislation, I always worry that an unintended consequence may be to push drug users towards drugs that are less detectable. That is a comment. My concern, however, on an evidentiary basis from the answer the minister has given to the chamber this evening, and I do not think it can be resolved here, is that there are experts who can give evidence of impairment from detected levels of various drugs—cocaine, heroin or whatever these people are using—but we cannot include that in the legislation because it is so variable that that expert evidence itself might be questioned. Therefore, it really has to get down to, perhaps, the manner in which the person was driving and their capability to drive at the time as observed.

However, I have another question. The amendment in clause 31 to section 64AB does not replace just the four hours with 12 hours. It states —

> In section 64AB(7) delete "4 hours" and insert:
>
> 4 hours, or 12 hours if the sample was taken under section 66(8B),

That will be the new section 66(8B). I have been trying to follow the scheme of that from the consolidated bill that the minister has kindly provided us with. I wonder whether the minister could explain to the chamber the circumstances under which the sample will be taken under what will be new section 66(8B). I will let the minister get the explanation. That is okay. I want the minister to be properly advised, because it is important. It is my understanding that it is only when the sample is taken under new section 66(8B) that the 12-hour proviso—the 12-hour testing time—will come in.

Mrs L.M. HARVEY: That is correct. In a crash occasioning serious bodily harm the sample can be taken within 12 hours.

Mr J.R. QUIGLEY: But not in other cases?

Mrs L.M. Harvey: That is correct.

Clause put and passed.

Clause 32 put and passed.

Clause 33: Section 65 amended —

Mrs M.H. ROBERTS: I have an amendment on the notice paper. I move —

> Page 19, line 24 — Before "person" insert —
>
> medically qualified

We had quite some discussion about this last evening. Clause 33 of the Road Traffic Legislation Amendment Bill (No. 2) 2015 states —

> 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;

If this amendment is accepted it will read at proposed paragraph (b) "a medically qualified person prescribed for the purposes of the provision in which the term is used". The explanation for clause 33 in the explanatory memorandum provided by the minister states —

> The Road Traffic Act 1974 currently provides for blood samples to be taken by, and urine samples to be provided to, a medical practitioner or registered nurse.
>
> It is desired to enable a broader range of appropriately qualified, medically trained personnel to take blood samples and to be provided with urine samples.
>
> This clause amends the RTA section 65 by adding a new definition "*prescribed sample taker*" to provide that regulations may prescribe other appropriately qualified classes of person, such as phlebotomists, to be prescribed for this purpose.

My issue is that this clause proposes no qualification; it just states, "a person prescribed for the purposes of the provision". We learnt with one of the earlier clauses that the Commissioner of Police will be the person who can prescribe who these people are by way of regulation or whatever. Sorry, is it the commissioner for road safety or the Minister for Police?

Mrs L.M. Harvey: The Minister for Road Safety.

Mrs M.H. ROBERTS: The commissioner for road safety?

Mrs L.M. Harvey: No, the Minister for Road Safety.

Mrs M.H. ROBERTS: So the future minister will determine who the qualified person is and table regulations before the house. Previously, that person was the chief executive officer of the ChemCentre of WA. In some circumstances the Commissioner of Police is inserted, in others it is the minister. The explanatory memorandum basically states that it is the intention to effectively have someone who is medically qualified and to broaden it to other people. It states —

> a … range of appropriately qualified, medically trained personnel …

Last night, when I said that I may be moving such an amendment, I suggested the words "a medically qualified person". If that term is not appropriate or if Parliamentary Counsel recommends a different term to achieve the same effect, I am very open to accept whatever that term is and to see it incorporated. I can see the reasons the government might want to broaden "prescribed sample taker" beyond just a general practitioner or nurse. Clearly, a phlebotomist is ideally qualified to take blood samples. I do not think just anyone should be "prescribed for the purposes". It is not a matter of what the intention is or what the current practice is or what the intended practice is; it is always a matter of what the law states. I do not want members in this house in the future saying, "How did this person get prescribed when they do not have medical qualifications?"

Mrs L.M. HARVEY: I understand the concerns of the member for Midland. However, I am advised that to insert the term "medically qualified" would potentially inappropriately narrow the range of people able to take a sample and would require us to consult various medical professionals, such as the Australian Medical Association, I presume, and others. I would be happy to amend the clause so it would read "appropriately qualified person" rather than "medically qualified" because that term limits the type of people who could be encompassed by this legislation. For example, phlebotomists are not necessarily medically qualified but they are appropriately qualified to take blood.

Mrs M.H. Roberts: I think that is a good idea.

The ACTING SPEAKER (Ms L.L. Baker): Member for Midland, you need to withdraw your amendment and either the member or the minister will then move the new amendment.

Mrs M.H. ROBERTS: I withdraw my amendment.

Amendment, by leave, withdrawn.

Mrs L.M. HARVEY: I move —

> Page 19, line 24 — Before "person" insert —

appropriately qualified

Mrs M.H. ROBERTS: I think that is a step forward. I think it puts a further check in the bill. It does not specify a medical qualification or the like. I fully understand that that is the intention. I also fully understand that a phlebotomist is an appropriate person to take blood. Maybe the AMA or whoever judges these things may suggest that they are a medically qualified person but they would fit the definition of "appropriately qualified". I do not think police officers would be lining up to take blood or would be given that role. Potentially, in the future, the Commissioner of Police might decide that a certain number of police officers or employees of the police force should get a qualification of some description. I think this places on the record the expectation that at least someone appropriately qualified and hopefully independent of the police service is able to take the appropriate samples. I support the amendment and thank the minister for her cooperation.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 34: Section 66 amended —

Ms M.M. QUIRK: The explanatory memorandum states —

> The impetus behind the following amendments is a comment by the State Coroner, following inquiries into three incidents where passengers in a motor vehicle or by-standers have been killed.
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> The comment surrounded the alleged failure by police responding to these incidents to require the driver of the motor vehicle to allow a medical practitioner or registered nurse to take a sample of the driver's blood for analysis, for the purposes of determining whether the person was under the influence of alcohol and/or drugs.
>
> There is no legislative authority to do so where the timeframe for the imposition of the requirement has passed or where a breath analysis result indicated that there was no alcohol present in the driver's blood and the police officer did not have the necessary reason to believe that person was under the influence of alcohol and/or drugs in order to be empowered to require the provision of a blood sample.

Another rationale for requiring the giving of a sample of blood is for research purposes. In other words, people such as Dr Rao at Royal Perth Hospital's trauma centre say that it is very important to be able to determine the cause of a crash. Some of his colleagues, for example, are reluctant to take blood samples if it is other than for clinical reasons. In addition to this forming part of the possible evidence or the prosecution brief, this requirement will assist the Road Safety Council and other researchers to understand the percentage of crashes that are influenced by the ingestion of alcohol and/or drugs. I want confirmation that that also is an impetus for this set of provisions.

Mrs L.M. HARVEY: I am advised that the design of this is not for the purposes of necessarily a road safety research project; it is designed around ensuring that we can test the blood of drivers or suspected drivers who are involved in fatal or serious-injury crashes. That would be for evidentiary purposes for police to determine whether they were impaired by alcohol and/or drugs at the time of the crash. Once that evidence becomes part of the evidentiary chain and part of the offences being levied against an offender and all that sort of thing, that information becomes part of the data that can be used for research purposes for the Road Safety Council, police and other entities. But it needs to be the driver or the suspected driver involved in fatal or serious-injury crashes who will be tested.

Ms M.M. QUIRK: As I understand it, Dr Rao gave evidence to one of the parliamentary committees and he said that he had been involved in assisting in the drafting of these provisions. What I am trying to find out is: for the purposes of research, when will this evidence be available from the test? Will it be consolidated in the year, will information in each individual case be available to researchers, or will the response be that we can have that information once a prosecution is finished?

Mrs L.M. HARVEY: I am advised that the information could not be released in matters that are sub judice, but once a matter has been concluded by the court, under clause 16, which amends section 15 of the act, the commissioner can disclose that incident information for the purposes of road safety research.

Ms M.M. QUIRK: I am a bit concerned about this. In fact, I think the Community Development and Justice Standing Committee made a recommendation that such provisions be enacted. It seems to me that there is not going to be a system for the collective gathering of this information for statistical research purposes. As we know, it is a bit of a guesstimate at the moment. Although there might be an idea that someone is impaired and that that was a causal factor in a crash, we do not know with any degree of accuracy that that is the case; a lot of the time we are guessing. I am concerned that there may be delays in targeting other road safety strategies and that this information will not be in a form that can be readily collated and then used by the relevant authorities to target road safety strategies.

Mrs L.M. HARVEY: I am advised that, sadly, probably several thousands of these samples will be taken, and only the drivers or suspected drivers will be tested. Whether or not that driver or suspected driver then progresses to be charged with an offence, I am advised that the data collected from that incident will still be available for research purposes. The only prohibition on the release of that information would be if a matter was before the court, but any other information would be available through the data management systems and the databases that are shared between the Department of Health, the Road Safety Commission, the Insurance Commission of WA and WA Police.

Ms M.M. QUIRK: Can the minister tell me what substances it is proposed to test for?

Mrs L.M. HARVEY: It is alcohol and prescribed illicit drugs and potentially some prescription drugs if it is suspected that that may be a factor in a crash. It is all illicit drugs such as heroin, cocaine and methamphetamine.

Ms M.M. QUIRK: We are an ageing population and there is increasing concern, for example, that an incorrect combination of prescription medication may impair driving in some cases. I am concerned that it is almost like the chicken and the egg. The testing has to be done and the findings are the basis for forming a conclusion about what pharmaceutical or alcoholic agent caused the crash. What I am saying is: if there has to be some sort of suspicion before working out what we test for, are we going to get an accurate picture of the causal factors for an accident? As I said, although an incorrect combination of prescription drugs might not lead to criminal charges, does that information fall through the cracks or will that in some way combine with the other tests to make sure we get a complete picture of the status of impaired driving?

Mrs L.M. HARVEY: I am advised that it is not a reasonable suspicion test. If it is suspected that any of these drugs may be involved in the crash, we will be able to test for a broad suite of prescription and other illicit drugs and alcohol.

Ms M.M. QUIRK: This is probably not fair to ask of the minister's advisers, but clearly testing for the full gamut of possibilities is an expensive exercise. I am trying to work out what the template will be for drug testing. Will we be testing just for the common illicit drugs or will it be sufficiently broad to potentially combine tests for, for example, prescription drugs? Will there be some clinical input from the doctor, saying, "Look, I think this person may be on cannabis", or, "This person is elderly; they may well be on prescription drugs"? How will we inform ourselves on what to test for?

Mrs L.M. HARVEY: I am advised that this will obviously form part of the investigative process. Even when we are testing for specific drugs, ChemCentre testing will identify if there are other elements in the blood sample or traces of other elements that could potentially be tested for. In addition, we can hold these samples for up to three months, and they can still be then tested with a level of accuracy as to the toxicity results within the blood. Depending on where the investigation leads, for example, it may be that subsequent to a crash it is discovered that the person may be on a suite of prescription drugs, and testing could then occur for those drugs at a later time.

Ms M.M. QUIRK: That brings me to my second point. I know that there are provisions elsewhere for sharing information, but it seems to me that there is often debate in the public arena about the impacts of drugs versus alcohol and the relative influence of one or the other. I am wondering whether there is any capacity in some way, perhaps within police or Road Safety Council annual reports, to publish tests as a collective lot rather than individually—for example, of those tested, 42 per cent tested positive for meth, or 60 per cent tested positive for alcohol in excess of the legal limit, or whatever. It would be very good from a public policy perspective to be able to publish that in some form or other—either in the Road Safety Council annual report or by other means. I wonder whether there is anything to preclude that happening.

Mrs L.M. HARVEY: There is nothing in this legislation to preclude that happening. I envisage that that data would be made available through the annual reporting processes of the various agencies, because it is relevant information and of value to the community. Just to add further to the question of testing, I am advised that the first test that takes place at the ChemCentre is quite a broad spectrum test. If a class of drugs is detected, a more detailed test is done as to the levels of that particular toxin.

Ms M.M. QUIRK: That was very helpful, minister. Generally, do we have any indication of the impact of prescription drugs or an inappropriate combination of prescription drugs causing impairment when driving? I know research has been done elsewhere. Do we locally have any idea of how large the problem is?

Mrs L.M. HARVEY: Not to my knowledge, but there is an opportunity, obviously, through this crash bloods process to look for information and establish whether a trend is emerging.

Ms M.M. QUIRK: Will an authorised person take the blood with the instructions of a police officer or will it be part of the clinical process around those who care for the person involved in the crash?

Mrs L.M. HARVEY: It would need to be an authorised person as per a prescribed sample taker under proposed section 65.

Mr J.R. QUIGLEY: Proposed section 66(8B) reads —

If this subsection applies, a police officer may —

(a) require the person to do one or both of the following —

(i) allow a prescribed sample taker to take a sample of the person's blood for analysis;

(ii) provide a sample of the person's urine for analysis; or

(b) where the person is incapable of complying with that requirement—cause a prescribed sample taker to take a sample of the person's blood for analysis.

Does the "or" relate to just proposed subsection (8B)(a)(ii); that is, the person is incapable of supplying their urine for analysis? It seems that under (i) "allow a prescribed sample taker to take a sample of the person's blood for analysis" if the "or" related to that as well—if the person was incapable of allowing the person to take a sample of their blood for analysis, it would be difficult under (b) where the person is incapable of complying with that requirement—to cause the sample taker to take a sample of the person's blood for analysis. Does the minister see what I mean?

Mrs L.M. Harvey: Not really, no.

Mr J.R. QUIGLEY: Proposed paragraph (b) is the fallback position; that is, "where the person is incapable of complying with that requirement—cause a prescribed sample taker to take a sample of the person's blood for analysis." That is the fallback position when a person cannot comply.

Mrs L.M. Harvey: That is the unconscious person.

Mr J.R. QUIGLEY: Now we are dealing with an unconscious person who cannot consent. We then come back to the amendment the minister moved earlier when she said that a prescribed sample taker will be appropriately qualified. There is an unconscious person. The minister said a prescribed sample taker will be a person prescribed by the minister.

Mrs L.M. HARVEY: Yes. A prescribed sample taker is a medical practitioner or registered nurse or an appropriately qualified person prescribed for the purposes of the provision for which the term is used. It is either a medical practitioner, a registered nurse or a person prescribed in the regulations who is appropriately qualified to take that sample.

Mr J.R. QUIGLEY: So will it be the executive that will then promulgate regulations as to who is an appropriately qualified person?

Mrs L.M. Harvey: Yes.

Mr J.R. QUIGLEY: My first question then is: what does the minister envisage will be the appropriate qualifications of a person who will take bodily samples from an unconscious person? This will be an invasive procedure necessarily. I do not know whether the minister is contemplating that that person will be a trained police officer who is taught how to jab someone or an appropriately qualified person. For example, I know what an appropriate qualification is for taking a breath sample; that is, someone who has been trained and is certified to operate the equipment. However, what will happen when there is an unconscious person? There are two aspects to this. We have an unconscious person about to undergo an invasive procedure, so what does the minister envisage the appropriate qualifications will be for the person who takes the sample?

Mrs L.M. HARVEY: It would depend on the circumstances, obviously, but we envisage that this would work when an unconscious person is presumably in the hands of medical professionals. According to section 65, a prescribed sample taker is a medical practitioner, registered nurse, or an appropriately qualified person. It could be a phlebotomist.

Mr J.R. Quigley: I do not know what they are.

Mrs L.M. HARVEY: A phlebotomist is a person trained to take blood. A lot of hospitals, laboratories and places like PathWest employ phlebotomists, who are suitably trained to take blood from people. There is a qualification for it through the vocational education and training system.

Mr J.R. QUIGLEY: As the minister who will have the task of putting forward the regulations, is the minister envisaging that person will be a phlebotomist or a nurse or a person who has been trained in an invasive procedure?

Mrs L.M. Harvey: Absolutely.

Mr J.R. QUIGLEY: My second question is: when a person is incapable of complying with that requirement, the police do not request someone to do this, they cause them to do it—that is the language of compulsion—so how can a phlebotomist be compelled to take a sample? If a person is unconscious and in a dire circumstance, someone might be hesitant to interfere at all with their body. How will the bill cause, require or compel those people to do this?

Mrs L.M. HARVEY: To be clear, this is not about forcing a medical practitioner or a registered nurse or phlebotomist to take a sample from a person, should they be uncomfortable or unwilling to do it. The cause in this comes in when the police by virtue of an instruction to a suitably qualified person request that they take the sample. The legislation empowers them to make that request. By virtue of making the request, it would then cause the individual to take the sample.

Mr J.R. QUIGLEY: Would it not be more appropriate for the professionals to have the language of request—"we request that you comply"—rather than cause? The language puts the professional under the pump to do it at the police officer's direction, which will perhaps override his or her own professional concerns.

Mrs L.M. HARVEY: I disagree. My advisers say that this clause could not be construed in a manner to compel a medical practitioner or a suitably or appropriately qualified person to take a sample. We could only authorise and request that person to take the sample, which would then cause them to take that instruction. We can require them to take the sample under section 66 of the Road Traffic Act. I am also advised that this language already exists in that act.

Ms M.M. QUIRK: That is the point I was making earlier. As Dr Rao has said on numerous occasions, he is not able to compel his colleagues to take blood samples for the purposes of gathering evidence or research if it is not clinically necessary. My understanding is that this provision is in the bill so that medical practitioners can effectively not refuse or, for example, they may not be able to prevent or impede an authorised person from taking a sample. While I am on my feet, I ask, firstly, will the provision occur in every case as a matter of routine; and, secondly, will testing be done for drugs and alcohol, or will a decision be made to test for one or the other?

Mrs L.M. HARVEY: The reason the clause is worded this way is, obviously, if an unconscious person is incapable of providing a sample, the imperative of health professionals is to save their life. If the clinical management of the patient was such that the taking of a sample would interfere with the management of the patient or hasten an adverse health outcome, medical professionals in the hospital, for example, would be able to refuse to take that test until the person was clinically stable and it would not hinder the medical treatment that they receive. We expect a high level of compliance because there has been consultation with Dr Rao. His issue was that he was not authorised to take samples from people who may have been involved in a crash when driving a vehicle and there was an injury. Under the Health Act, he was permitted to take blood samples only to assist with the clinical management of patients. This provision would allow him to take samples for other purposes. It will clear the way for him to help us with our research into who these people are.

Mrs M.H. ROBERTS: Following on from the member for Butler's questions, does this amendment provide for samples to be taken from deceased persons?

Mrs L.M. HARVEY: No. Deceased persons are covered under the Coroners Act.

Mrs M.H. ROBERTS: I have a few other quick questions that the minister may be able to answer. In what percentage of fatal crashes, and separately, in what percentage of crashes that involve either grievous or serious bodily harm—whatever figures the minister can give me—are blood samples currently taken from the driver?

Mrs L.M. HARVEY: It is not compulsory, so we do not have that information.

Mrs M.H. ROBERTS: The member for Girrawheen has raised this point, and other concerned parties have also raised with me that this information is not available. It would surprise a lot of people in the community to know that we do not know what percentage of fatal crashes in Western Australia involved alcohol. We know about some, because it may be that samples have been taken by the coroner, or police have attended the scene of a fatal crash and have breathalysed persons who are not deceased. We do not have an accurate picture for fatal crashes in Western Australia of whether the people involved in those crashes or who potentially caused those crashes were under the influence of alcohol or prescription or illegal drugs. The member for Butler referred to the issue of impairment, and people's driving being impaired. I suspect there may be lots of people over recent and more distant years who got away without being charged with that impairment, or a range of other charges, because they were not tested for the presence of alcohol or drugs. It is definitely a step forward to be able to take samples. I would have thought this would benefit not only research but also the community. In talking to people about this in recent times, most people make an assumption that this is already in place and that if a driver is involved in a road crash and has a collision with another car and that causes somebody in the other car to be deceased, the police have the capacity to take, at the very least, a breath test and an

accurate reading to assess the driver's impairment from alcohol. In recent years I know that other states have been able to test for and assess the presence of drugs. This is a step forward and the opposition is supportive of it. The question that arises is whether it goes far enough on a range of fronts. I refer to the parts in the explanatory memorandum that state police officers "may" require a sample to be taken. On clause 34, the explanatory memorandum states —

> A police officer may require any driver to provide a sample of breath for a preliminary test …
>
> A police officer may also require a person he or she has reasonable grounds to believe was the driver of that vehicle to provide a sample of breath for a preliminary test.

Further down, it states —

> In some circumstances, a police officer may require a person to provide a breath or a blood sample, …

In all crashes that are believed to have caused death or grievous bodily injury, there should be a compulsion for testing to take place. That would be useful for later peace of mind for all parties involved, particularly when one party feels they are an innocent party or a family has lost a family member in the crash, but a sample has not been taken. There does not appear to be a requirement under this clause or other clauses in the bill that a police officer must or should take a sample; it is just that they "may", so they have an option. I do not think it should be optional, effectively, on an operational basis. People need this peace of mind.

Ms M.M. Quirk: I would like to hear more from the member for Midland.

Mrs M.H. ROBERTS: Also, I do not think it should just be "may" for the purposes of the research that the member for Girrawheen was referring to. We are entitled to know as a community whether people involved in fatal crashes were under the influence of alcohol or drugs, and, if they were under the influence of drugs, which drugs. This is really useful information. I do not necessarily need to know, on a case-by-case basis, whether person A, B or C was involved in any of those things, but as a member of this community I am entitled to know what percentage of people involved in fatal crashes, or who were found culpable in fatal crashes, were under the influence of alcohol, what percentage had been using methamphetamine, and what percentage had been using a combination of meth and alcohol, or a combination of prescription drugs and alcohol. Without that, we do not have enough information on the factors involved in serious crashes. It may well be that some other external factor is involved. It might be that a kangaroo had hopped across a country road, or some other circumstance, such as poor weather conditions or a tree bough that had fallen across the road. That may be determined to have been the cause of the crash, but it still might be a crash that may have been avoided if the person was not under the influence of alcohol or prescription or illicit drugs. Sometimes there is more than one causal factor, and sometimes, even though there might be a primary causal factor, the fact that the person is under the influence of drugs or alcohol or some combination of both is relevant. If we want to reduce death and serious injury on the roads, we must have an idea of the kind and size of the problem we are dealing with. Effectively, I seek some clarification from the minister on why we are not making it a requirement to collect these samples from all fatal crashes and crashes that involve grievous bodily harm, rather than just giving the police a new power under which they may require that to be done.

Mrs L.M. HARVEY: There are a number of reasons for using the word "may" in the circumstances, rather than "shall". If we were to compel testing in these circumstances, it may compel officers or medical practitioners to take a blood sample from a person when it could in fact cause the person's death if they were fatally or critically injured. Police officers need to use the appropriate discretion. We expect that between 2 000 and 2 500 drivers will be tested each year under this scheme. This allows for the driver involved in any crash in which there is a serious injury or death to be tested. That has not been available in Western Australia before. With respect to the accuracy of our figures around the involvement of alcohol in crashes, although police have not had this capacity to take blood samples from every individual, particularly if they have been conveyed to hospital, for example, through their investigative techniques, police use other evidentiary means to determine whether alcohol may have been involved in the crash. This is a step forward, in that it enhances the ability of police to investigate and will reveal to us far more effectively the involvement of illicit drugs in these crashes. At present, police do not have the ability to test for that. They have not been empowered to test for illicit drugs. I would not consider changing the word "may" to "shall" in this clause because I believe it is appropriate for police officers to exercise their discretion. The commissioner's guidelines will certainly be very clear in ensuring that we have an accurate snapshot of this cohort of drivers. I envisage that this testing would occur in all but very rare and exceptional circumstances.

Mrs M.H. ROBERTS: I think some of what the minister has said is valid, but we could easily get around some of it. The minister started off by saying that one of the reasons that we are not compelling police officers to ensure that samples are taken in every fatal crash in every instance in which there is grievous bodily harm is that if somebody is critically injured, the taking of blood could cause their death. I think that would be a very rare

case, but, even so, I think it would be simple enough to put in at the appropriate points in each proposed subsection the words, "except when the taking of such samples could endanger the life of the individual from whom the sample would be taken". Some form of words such as that could be drafted by Parliamentary Counsel to get around that. If there was any concern that taking a sample could endanger or harm the health of an individual, consideration should be given to that and a sample would not be taken. I think we could get around that.

I do not intend to dwell on this issue much longer. I agree with the minister that this is certainly a significant step in the right direction. I would be happier if I knew we were able to get samples from all fatal crashes and all crashes that involve grievous bodily harm. Like the minister, I do not think that we should be taking samples if that would be injurious to someone's health. There needs to be an exception, but I think we could have a general rule that police will do it. I also understand that the minister believes that the Commissioner of Police will effectively instruct officers that in most cases they should take samples. Hopefully, that will occur as a matter of policy. It is not set down in law as part of this legislation. But it is a step in the right direction and I expect over the next 10 years or so we will see further advances in the taking of samples. At least this is a start and a step in the right direction.

Clause put and passed.

Clause 35: Section 69 amended —

Mrs M.H. ROBERTS: Clause 35 seeks to amend the Road Traffic Act to provide that the sample that has been taken is effectively split in two. Clause 35(2) seeks to insert after section 69(1a) of the act the following new subsections —

> (2A) The prescribed sample taker must ensure that both samples are delivered to a police officer.
>
> (2B) One of the samples must be delivered, on behalf of the person from whom the samples were taken, to the Chemistry Centre (WA) by a police officer or a person … engaged for that purpose.

Can the minister explain why the sample taker has to give both the samples to a police officer and can the minister also explain the qualifications of the person who could be engaged for that purpose of sending it to the ChemCentre? Are we talking about a courier or somebody else?

Mrs L.M. HARVEY: I am advised that the purpose of new subsections (2A) and (2B) is to ensure the integrity of the samples and that they cannot be tampered with. The two samples must be delivered to a police officer. One of those samples is conveyed by a police officer, or an appropriate courier company, for example, to the ChemCentre. The reason there are two samples is that the offender, who may be unconscious or intoxicated or whatever it may be, may wish to have the sample independently tested. The sample is held by an independent authority—the ChemCentre—and that provides that independence.

Mrs M.H. ROBERTS: I am well aware of why we need two samples. It provides for a separate analysis to be done on behalf of, let us call them, the defendant. I fully understand that. The minister's explanatory memorandum makes reference to a period of three months in which some analysis can be taken. I assume that is already in the Road Traffic Act or whatever. I cannot read that in the clause itself. I assume it is in section 69 of the Road Traffic Act but perhaps the minister can clarify that for me. I will get back to my original question. Basically, the prescribed sample taker, who could be a general practitioner, a nurse, a phlebotomist or another appropriately qualified person, will take the sample and split it in two. If we are talking about independence and so forth, I am querying why both samples need to be given to the police. If the sample is taken from the sample taker or testing authority or whatever and given to the police, how can the defendant or their representative have confidence in the sample that is given to the police?

Mrs L.M. HARVEY: I am advised that both samples will be contained in evidence bags that have integrated tamper-proof mechanisms. Just to be clear, one of the samples is provided to the police, who then test that sample. The sample that is provided to the ChemCentre is kept at the ChemCentre on behalf of the offender should they wish to have the sample independently analysed. Both the samples will be in evidence bags. There are two separate processes. There are obviously certification requirements for whoever handles those evidence bags, from when the sample is taken, right through to court.

Mrs M.H. ROBERTS: I am dealing with the bill in front of us. At page 21, line 21, it states —

> The prescribed sample taker must ensure that both samples are delivered to a police officer.

Can the minister explain that? It does not appear to me, from my reading of that proposed new subsection, that one sample is given to the police and one is given to the ChemCentre, but there may be an explanation for that.

Mrs L.M. HARVEY: They are both given to the police. The police keep one sample, and they give one to the ChemCentre to be stored on behalf of the offender.

Mrs M.H. ROBERTS: I will just finish off on that then. The minister said that the police keep one and they give one to the ChemCentre.

Mrs L.M. Harvey: Or have one couriered to the ChemCentre.

Mrs M.H. ROBERTS: I do not see why they would not give both samples to the ChemCentre, get one analysed themselves and get one stored for the other party.

Mrs L.M. HARVEY: I am advised that the investigating officer would receive both samples in separate evidence bags. They are then conveyed to the ChemCentre where one is stored and one is tested by the police. I hope that clarifies things.

Mrs M.H. Roberts: That is what I thought would happen. Thank you.

Clause put and passed.

Clause 36 put and passed.

Clause 37: Section 69B amended —

Mrs L.M. HARVEY: I move —

> Page 22, line 28 — To delete "prescribed sample taker" and substitute —
>
> authorised drug tester

This amends section 69B of the Road Traffic Act 1974 to provide that if an authorised drug tester is of the opinion that a person's oral fluid sample contains a prescribed illicit drug, the sample is to be divided into two parts and the samples of both are be handed to a police officer for subsequent delivery to the ChemCentre. The amendment to the Road Traffic Legislation Amendment Bill (No. 2) 2015 inserts subsection 69B(2), which mistakenly refers to a prescribed sample taker instead of an authorised drug tester. This amendment fixes the mistake.

Amendment put and passed.

Mr J.R. QUIGLEY: When I read clause 37 and what preceded it, it was specific in that one of the samples would be delivered to the person from whom it was taken. Those words were deleted from the previous clause in which proposed section 69A (3) states —

> One of the samples must be delivered, on behalf of the person who provided the samples, to the Chemistry Centre (WA) by a police officer or a person appointed or engaged for that purpose.

Can the minister take me to where it states the rights of the person from whom the sample was taken?

Mrs L.M. Harvey: Pardon?

Mr J.R. QUIGLEY: Clause 37 amends section 69B, does it not?

Mrs L.M. Harvey: Yes.

Mr J.R. QUIGLEY: Clause 37(2) states —

> At the end of section 69B insert:
>
> (2) The prescribed sample taker must ensure that both samples are delivered to a police officer.

Mrs L.M. HARVEY: I am advised that the member is talking about the next clause. On page 22, line 28 —

Mr J.R. QUIGLEY: Sorry, page 23 —

Mrs L.M. HARVEY: No, we are on page 22 with this amendment.

Mr J.R. QUIGLEY: Correct, but the minister said that the next clause covers what I am talking about, did she not? I am talking about what happens to the B sample.

Mrs L.M. Harvey: We cover that in the next clause. This amendment fixes a typographical error.

Mrs M.H. Roberts: We have put the amendment, have we not?

The SPEAKER: I am putting the clause now. The member for Butler stood up.

Mr J.R. QUIGLEY: I am speaking to the clause itself. What is happening to the second sample—the B sample? In an earlier amendment, words to the effect of "one sample be delivered to the person from whom it was taken" were struck out.

Mrs L.M. HARVEY: The member may not have been here when I was explaining that. The way it works is that two samples are taken and they are both sealed in evidence bags. Because the person from whom the sample is taken may be unconscious or drunk or otherwise unable to store the sample appropriately, the samples are taken to the ChemCentre. The B sample is held in the evidence bag on behalf of the offender, should they wish to have it independently tested. The A sample, which the member is referring to, is the one that the police would have

tested to be used as part of the evidentiary procedures. That is explained in detail in clause 38 under proposed section 70A on page 23 of the bill.

Mr W.J. JOHNSTON: I am interested in further exploring the question that is being raised. I was not here for all of my colleague's questions. The minister said that there are two samples: sample A goes to the ChemCentre on behalf of the police and sample B is retained in the evidence bag for potential testing by the person themselves. The minister then said that the next clause we will deal with, clause 38, relates to the handling of the B sample but I am not quite sure that that is the case. It states that it has to be retained and appropriately stored by the ChemCentre. Clause 37(2) proposes to insert section 19B(3), which states —

> One of the samples must be delivered, on behalf of the person who provided the samples, to the Chemistry Centre (WA) by a police officer or a person appointed or engaged for that purpose.

The authorised drug tester takes two samples and delivers them to a police officer.

Mrs L.M. HARVEY: Under clause 37, a prescribed sample taker takes the samples. They hand them to a police officer, who puts them in two separate evidence bags. Those bags are then delivered by a method to the ChemCentre. The ChemCentre stores one sample on behalf of the offender so that they can access it for independent testing. The other sample is tested by the ChemCentre on behalf of the police for evidentiary purposes. In clause 38 we are inserting proposed sections 70A and 70B. Section 70A details the rules around the storage of the sample that is being held by the ChemCentre on behalf of the offender and the requirements of the ChemCentre and the rules around the ability of the person from whom the sample has been taken to request the sample to have it tested.

Mr W.J. JOHNSTON: If the B sample goes to the ChemCentre on behalf of the person, where does the A sample go?

Mrs L.M. HARVEY: I thought I was clear when I said the two samples go to the ChemCentre. One is held by the ChemCentre on behalf of the offender; the other is tested by the ChemCentre on behalf of police.

Mr W.J. JOHNSTON: I understand exactly the answer the minister has given me, but I am not quite sure that that answer reflects the words. Proposed section 69B(1) tells us what happens to the sample. It states that if the authorised drug tester decides there are illicit drugs, it is divided into two parts. Proposed subsection (2), which is what will be inserted, states —

> The authorised drug tester must ensure that both samples are delivered to a police officer.

Subsection (3) states that one of the samples must be delivered to the ChemCentre by a police officer but it does not state what happens to what I will call the A sample.

Mrs L.M. Harvey: Can I explain?

Mr W.J. JOHNSTON: Yes, the minister can. That is why I am trying to get it clarified.

Mrs L.M. HARVEY: We need to go back to a couple of clauses ago. Clause 35 amends section 69(1). I refer to page 21, line 21, which states —

> (2A) The prescribed sample taker must ensure that both samples are delivered to a police officer.
>
> (2B) One of the samples must be delivered, on behalf of the person from whom the samples were taken, to the Chemistry Centre (WA) by a police officer or a person appointed or engaged for that purpose.

That is the offender's sample. The other sample is then tested by the ChemCentre by police.

Mr W.J. Johnston: Where does it say that?

Mrs L.M. HARVEY: It does not say that. One of them remains in the possession of police to be tested by the ChemCentre. I guess the important sample on behalf of the offender, who may be unconscious or inebriated or whatever, is held by the ChemCentre to ensure that it can be tested independently, should it be required.

Mr W.J. JOHNSTON: Thank you. I appreciate that explanation. I think I understand what the minister is saying. We are prescribing that the sample, on behalf of the person who is alleged to have done whatever, is sent to the ChemCentre by police and held at the ChemCentre on behalf of that person so they can later have it tested. What happens to the original sample; the one that is retained by police? It may be that we do not need to specify what happens to it, which is cool, but it is noted that the minister is specifying what happens to what is called the B sample. I think my friend was pointing out he was surprised that there is not a provision that says what happens to the original sample. That is all we are asking. Yes, we understand the B sample is taken by police to the ChemCentre so that the person involved can get that separately tested. Given that the authorised drug tester has already determined that there is illicit material in the sample, is the minister saying she is not prescribing what happens to the part retained by police? She might not; I am not saying that she has to, but is the minister saying she is not prescribing what happens to the part that is retained by police?

Mrs L.M. HARVEY: To clarify, two samples are taken at the same time and put in evidence bags. They are both conveyed to a police officer, who then ensures that one of them is dispatched to the ChemCentre to be held independently for the offender. The other one is retained by police for evidentiary purposes and goes for testing to the ChemCentre or some other place. The certification of whatever is found in that forms part of the evidence brief for police as part of a normal evidentiary procedure. One sample is held by police or on behalf of police, whichever is deemed appropriate, for evidentiary purposes, and one independent sample is held by the ChemCentre for the offender to access should they choose.

Mr W.J. JOHNSTON: I appreciate that. I agree that that is exactly what is going to happen. All I am asking is: given we are specifying what happens with the B sample, is there anywhere that specifies what happens with the A sample? Remember, it has already been tested. Proposed section 69B(1) of the blue bill states —

> (1) If the drug testing of a sample of a person's oral fluid … indicates, in the opinion of the authorised drug tester who conducted the drug testing, that the person's oral fluid contains a prescribed illicit drug, the sample shall be divided into 2 parts, …

Does the minister see what I am getting at?

Mrs L.M. Harvey: No, member, I don't understand what you're getting at.

Mr W.J. JOHNSTON: Let me put it in simple terms. One sample is taken from the person. That one sample is then tested and that regime is specified in proposed section 69B(1). Has the minister read that bit? I will read it out again. It states —

> (1) If the drug testing of a sample of a person's oral fluid under section 66D(4)(b) indicates, in the opinion of the authorised drug tester who conducted the drug testing, that the person's oral fluid contains a prescribed illicit drug, …

That states that a sample has been taken and it has been tested and, in the opinion of the authorised drug tester, it contains a prescribed illicit drug. Then what happens? The sample shall be divided into two parts, each of which shall be deemed to be a sample of the person's oral fluid for the purposes of the act. That is very clear. It is one sample. One sample is tested and then the fluid that was tested is divided into two parts. In part 3 of the bill, clause 37(2) states —

> At the end of section 69B insert:
>
> …
>
> (3) One of the samples must be delivered, on behalf of the person who provided the samples, to the Chemistry Centre (WA) by a police officer or a person appointed or engaged for that purpose.

It is directing us that one part of that sample goes to the ChemCentre on behalf of the accused. But look at what proposed subclause (2) states. It states —

> The prescribed sample taker must ensure that both samples are delivered to a police officer.

Let us have a look again. Proposed section 69B(1) states that the authorised tester has tested the fluid and determined that it contains an illicit drug, but they then divide that sample into two parts—we will call them the A part and the B part. It states that both the A part and the B part are to go to the police officer. It then states that the B part is to go to the ChemCentre. Nowhere in this clause does it state what happens to the A part. It does not have to, but if it does not do that, we want to know why it does not do that. It is not a complicated issue. It is just simply reading the words that the minister is asking us to support. I am unsure why the minister does not understand the words that she has asked us to support.

Mrs L.M. HARVEY: I am advised that the sample that police retain for testing is then tested. We are not actually changing with this legislation the process for what police do with their samples; we are just inserting an extra process for how they deal with the sample that is taken and held independently on behalf of the offender. It is a mandatory process for the treatment of the independent sample. There is an entire process for the sample that police test to ensure that the sample is handled appropriately and that the testing of the sample is certified, and that forms part of the evidence brief that police put together when they are determining whether to prefer charges against the offender. The provisions for how police treat such samples are already covered under the Road Traffic Act.

Mr W.J. JOHNSTON: Which provision of the Road Traffic Act does the minister say covers what we are calling the A sample—the sample obtained by the police? I point out to the minister that this is after the sample has been tested, not before. It is split into two parts only after it has been tested.

Mrs L.M. Harvey: No, that's not the same.

Mr W.J. JOHNSTON: I am sorry; I will read it out for the minister again. Section 69B of the Road Traffic Act states, in part —

> If the drug testing of a sample of a person's oral fluid under section 66D(4)(b) indicates, in the opinion of the authorised drug tester who conducted the drug testing, that the person's oral fluid contains a prescribed illicit drug, —

That is what it states. It states that the authorised drug tester has conducted the drug testing. It states it there in the act. It has already been tested. Section 69B continues —

> the sample shall be divided into 2 parts, each of which shall be deemed to be a sample of the person's oral fluid for the purposes of this Act …

It is tested and then it is divided and then, under proposed subsection (3), we send one part—we will call it the B part—to the ChemCentre and we still have the other part that has already been tested and that the police retain. That is wonderful; I am not criticising that. That is not a problem. I am just asking, and my friend is asking: what is the procedure? Where is the procedure for the bit that is retained by the police? Where is that dealt with? It is not a complicated question.

Mrs L.M. HARVEY: If the oral fluid sample tests positive, it is split in two. One is then sent for further testing. If it is positive, it is split in two, and then one is held by the police and sent for further testing and one is —

Mr W.J. Johnston: Why? Why is it sent for further testing?

Mrs L.M. HARVEY: It is an evidentiary test to determine what was actually in it.

Mr W.J. Johnston: Okay, but where's that specified in the act?

The SPEAKER: One member at a time!

Mrs L.M. HARVEY: It is specified under proposed section 69B(1), I am advised.

Mr W.J. Johnston: Why don't you read 69B(1) out loud for me, minister, so we can get that clarification.

Mrs L.M. HARVEY: Member, I am sure you can read it yourself.

Mr W.J. Johnston: Yes, I have, a number of times, and it says nothing about testing it after it's already been tested. After the authorised person tests it and determines that there's something wrong, then it's divided. It's not divided first and then tested.

Mrs L.M. HARVEY: If the oral fluid tests positive, it is split in two. The prescribed sample taken must ensure that both samples are delivered to a police officer. One of the samples must be delivered on behalf of the person providing the samples to the ChemCentre WA by a police officer or a person appointed or engaged for that purpose. The other sample is held by police. Police may choose to conduct a further test to determine what else might be in the oral fluid and it is held under normal evidentiary procedures.

Mr W.J. Johnston: Is that specified in the act?

Mrs L.M. HARVEY: It is not specified in this legislation, but it forms part of the normal process with respect to managing evidence for the purpose of prosecuting people under the legislation.

Mr W.J. JOHNSTON: After all this time, the answer the minister is giving me, which is a great answer—I am not criticising it—is that other procedures not contained in the act deal with the A sample. Is that what the minister is saying?

Mrs L.M. HARVEY: It is held by police and it is not a prescribed procedure.

Mr W.J. Johnston: Did you say in a prescribed procedure?

Mrs L.M. HARVEY: I said it is not a prescribed procedure. It is held by police as evidence.

Mr W.J. Johnston: But it is not a prescribed procedure.

Mrs L.M. HARVEY: Correct.

Clause, as amended, put and passed.

Clauses 38 and 39 put and passed.

Clause 40: Various references to "medical practitioner or registered nurse" amended —

Mrs M.H. ROBERTS: I note in the explanatory memorandum for clause 40 at the top of page 26 that reference is made to clause 33, which is the one I proposed an amendment to. It states —

> Clause 33 provides that regulations may prescribe other appropriately qualified classes of person, such as phlebotomists, who are to be allowed to take blood samples and to be provided urine samples, in addition to medical practitioners and registered nurses.

I note the words in the explanatory memorandum are prescient because they say "other appropriately qualified classes of person". I think the explanation here fits with the amendment we made earlier tonight with the agreement of the minister.

Clause put and passed.

Clause 41 put and passed.

Clause 42: Part V Division 1A replaced —

Mrs M.H. ROBERTS: This clause takes us to part V and seeks to delete part V division 1A and insert new division 1AA headed "Division 1AA — Terms used in this Part". Proposed section 49AAA. "Terms Used" states —

> In this Part —
>
> ***grievous bodily harm*** has the meaning given in The Criminal Code …
>
> ***instructor*** means a person who may give driving instruction under the Road Traffic (Authorisation to Drive) Act 2008 section 10(2);

Is an instructor under this meaning a person who could be someone's mum, dad, uncle, aunt, friend, neighbour or whoever holds a licence for the category of vehicle the person is learning to drive?

Mrs L.M. Harvey: That is correct.

Mrs M.H. ROBERTS: Under new part V, proposed section 49AA "Circumstances in which person taken to be instructor or in charge of motor vehicle" refers to the person seated beside the learner driver and so forth. Then the definition of a person understood to be in charge of a motor vehicle is changed. Could the minister explain what has driven this amendment? I understand, for example, that a person who happens to be giving instruction may not be aware that they are providing instruction in an unlicensed or stolen vehicle, or something of that nature, and that even though they are the instructor, they would not be deemed to be in charge of that motor vehicle. Is that part of the import of clause? Can the minister explain that further?

Mrs L.M. HARVEY: I am advised that the proposed section the member for Midland is referring to will provide that an instructor providing driving instruction to a learner driver is, for the purposes of Part V in the RTA, other than for sections 49AB and 66A, taken to be in charge of the motor vehicle driven by the learner driver. As "a person in charge of a motor vehicle", that person in charge of the motor vehicle, an instructor, can then be subject to several provisions of that part; namely, section 57 "Owner et cetera of vehicle occasioning bodily harm to help police identify driver et cetera"; section 66 "powers to require breath, blood or urine sample"; and section 66C "Police powers to require oral fluid test". It is described in that manner to enable police to interact with the instructor as though they were the driver or in charge of the motor vehicle.

Clause put and passed.

Clause 43 put and passed.

Clause 44: Part V Division 2A inserted —

Mrs M.H. ROBERTS: Proposed section 62B(1) states —

> An instructor who provides driving instruction to a learner driver while having a blood alcohol content of or above 0.05 g of alcohol per 100 ml of blood commits an offence.

Then the penalty is listed, which is—again it is repeated in other proposed sections—a fine of not less than six penalty units or more than 10 penalty units. I have a couple of questions. I take it that this is just a fine and it does not involve the loss of any demerit points for the instructing driver. Can the minister clarify that and whether she considered the application of demerit points here? Why is there a variation between six and 10? How will it be determined whether someone is fined six penalty units, eight penalty units, nine penalty units or 10 penalty units?

Mrs L.M. HARVEY: A range has been put in the provision to allow the court to determine, depending on the circumstances and the level of danger, I propose, that the fine will be between six penalty units and 10 penalty units. No demerits are associated with this provision because the instructor is not driving. However, there is a fine.

Mrs M.H. ROBERTS: Can the minister clarify why this is not dealt with as just a simple infringement. If we are talking about just a fine and we are not talking about even the loss of demerit points, surely it would be more

administratively efficient and cheaper to have a fine regime. If a driving instructor has a blood alcohol level over .05, a set fine could be dealt with by way of infringement; if they are over .08, they could be dealt with by way of infringement. However, if they are at some higher level, maybe there is a good cause to put the instructor before a court. I did not expect that these matters would necessarily consume court time. If someone is driving with a blood alcohol level of .06, as they may be at the moment, why would they not get just an infringement, like people would in other circumstances? Why does it need to go before the court?

Mrs L.M. Harvey: I am seeking some advice, member.

Ms M.M. QUIRK: I am interested in the member for Midland's wise words.

Mrs M.H. ROBERTS: To put on the record of the house, six penalty units, which is the lower end of the fine that could be put in place by a court, is $300 and 10 penalty units is $500. Here we are talking about the penalty for people who have alcohol in their system above .05 grams of alcohol per 100 millilitres of blood. The penalty is between six and 10 penalty units, which is a fine of between $300 and $500. In the scheme of things, that is not a huge fine. Again, it is certainly an advance on the current situation in which there is no penalty for a person who has alcohol in their system while instructing someone in driving. The adjudged penalty here is between six and 10 penalty units. If we are talking about a fine of somewhere between $300 and $500, I query why that would not be dealt with just by way of infringement and the person would have the ability to challenge that in court, should they choose to do so. It seems to me that this will unnecessarily take up the court's time and the magistrates' time while they determine whether to give a fine at the $300 end or the $500 end. I have to say that I would be inclined to think it should be just a $500 fine by way of infringement and potentially the fine should be higher if it is challenged in court and the person is determined to be guilty.

Mrs L.M. HARVEY: I am advised that the penalty is set in the act and the regulations then prescribe the infringement. In effect, how this will work is police will issue an infringement for a penalty for the fine.

Clause put and passed.

Clause 45: Section 62B amended —

Mrs M.H. ROBERTS: I understand this clause deals with the alcohol interlock restriction. Can the minister advise the import of this clause?

Mrs L.M. HARVEY: When the Road Traffic Amendment (Alcohol Interlocks and Other Matters) Act comes into operation, section 17 will insert provisions into the Road Traffic (Authorisation to Drive) Act 2008 that will empower the making of regulations providing for the creation of a framework under which persons convicted of certain drink-driving offences, who will be known as alcohol interlock offenders for the purposes of the regulations, will be subject to alcohol interlock restriction if and when they are subsequently authorised to drive. In effect, this clause amends the offence provision by the insertion of clause 44 to include persons with an alcohol interlock restriction and alcohol interlock offender as a specified person with a zero alcohol limit whilst providing driving instruction. It is a consequential amendment to section 12 of the interlock act and it must not commence until after that section has commenced. If section 12 of the interlock act is to come into operation before or at the same time as this clause, the amendments in this clause should be proclaimed to commence immediately after those proclaimed in clause 44. In effect, it inserts an alcohol interlock offender as a person who will have a zero alcohol limit. As I have stated, these clauses will need to commence at the same time as section 12 of the alcohol interlock act comes into operation.

Clause put and passed.

Clauses 46 to 51 put and passed.

Clause 52: Section 68A inserted —

Mrs M.H. ROBERTS: This clause inserts new section 68A after section 67A and deals with failure to comply with sections 66, 66C, 66D or 66E requirements for instructors. It refers to what I believe are new offences. Under this clause, or because of other clauses, is the person who is deemed to be the instructor of a learner driver now required to take a breath test and, potentially, have other bodily fluids sampled?

Mrs L.M. HARVEY: This clause effectively requires that an instructor is compelled by the provisions set out in sections 66, 66C, 66D or 66E of the Road Traffic Act, which are the provisions that compel a person to provide an oral sample.

Mrs M.H. Roberts: It effectively puts them in the same position as the driver of a vehicle

Mrs L.M. HARVEY: It does. For the purposes of drug and alcohol testing, it compels the instructor to comply as though they were the driver.

Clause put and passed.

Clause 53: Section 70B amended —

Mrs M.H. ROBERTS: The explanatory memorandum states that clause 53 provides for an evidentiary certificate. Clause 53 states —

> In sections 70B(1) after "offence against section" insert:
>
> 62B, 62C,

The explanatory memorandum states —

> Section 70B is to be inserted by clause 38 and provides for an evidentiary certificate relating to the delivery of the samples upon being handed to a member of the Police Force to be conveyed to the Chemistry Centre (WA) for analysis.

Is this just more of the same? Does this just effectively subject the instructor to the same requirements as if they were the driver, in terms of an evidentiary certificate, or is there something more to it than that?

Mrs L.M. HARVEY: That is correct. It compels the instructor to behave as if they were the driver, and comply as if they were the driver.

Clause put and passed.

Clauses 54 to 58 put and passed.

Clause 59: Section 35 amended —

Mrs M.H. ROBERTS: Can the minister advise whether the term "driver identity request" is a new term used under the Road Traffic (Administration) Act; and, if so, why it is being inserted into the Road Traffic (Administration) Act?

Mrs L.M. HARVEY: This amendment effectively allows for the supervisor of a learner driver or the person who is deemed to be in charge of the vehicle at the time to comply with a request to provide their identity. Ordinarily, if they were the driver of the vehicle, it would be a driver identity request, but the clause amends that term to remove the word "driver" to compel an instructor to provide identity upon request.

Clause put and passed.

Clause 60: Section 109 amended —

Ms M.M. QUIRK: This clause allows for certain evidentiary averments for use in prosecutions under road law. For example, a certificate or an averment can be produced to say that the person is someone who is subject to a zero blood alcohol limit while driving a motor vehicle. I can understand that, but can the minister explain the other one that is mentioned in the explanatory memorandum, which relates to a vehicle being driven by a learner driver while the driving instructor is providing instruction? The memorandum goes on to state —

> If the vehicle is specified in section 62B(5) of the RTA , a zero blood alcohol limit applies to the instructor.

What are the characteristics of the vehicle?

Mrs L.M. HARVEY: Section 62B(5) of the Road Traffic Act provides for a vehicle that is of 22.5 tonnes or more.

Clause put and passed.

Clause 61 put and passed.

Clause 62: Section 49 amended —

Mrs M.H. ROBERTS: Clause 62 amends section 49 of the Road Traffic Act. We are advised that section 49 of the RTA creates the offence of driving without authorisation, when the person is legally unentitled to drive for various reasons. I cannot actually remember whether it was this clause or another clause, but I was interested in raising at some point the matter of whether the instructor could be a person who is currently serving a driver's licence suspension or not. What is the law regarding that, and does this bill make any change to it?

Mrs L.M. HARVEY: A person instructing a learner driver has to hold a valid licence. This amendment is not linked to that. This amendment cleans up a loophole in section 49 that creates an offence of driving without authorisation. The offence provides an increased penalty when a person is legally disentitled to drive for reasons including having been refused a licence, having been disqualified from holding or obtaining a licence, or having a licence that has been suspended or cancelled. An anomaly exists in this section whereby a person can be disqualified from holding or obtaining a licence by the court whilst not holding a licence that had been previously held. Someone could have voluntarily surrendered their licence and we cannot disqualify them for a period for offences under the act. It basically increases the penalty for those persons driving on a cancelled or disqualified licence. Instead of being able to hand in their licence and avoid being charged with an offence and

receiving a period of disqualification, this allows us to impose that period of disqualification even if they did not hold a valid licence or their licence had expired.

Mrs M.H. ROBERTS: Is the minister saying that as the law stands somebody who does not hold a licence and commits an offence for which someone who holds a licence would get a disqualification period cannot effectively be given a licence disqualification period as a penalty?

Mrs L.M. HARVEY: In those circumstances, instead of receiving the higher penalty such as a disqualification period, they would be charged only with driving without authorisation, which is a lesser offence. This allows us to charge them with the appropriate offence and for them to receive the penalty that they should receive, rather than them being charged with the lesser offence of driving without authorisation.

Clause put and passed.

Clause 63 put and passed.

Postponed clause 6: Section 56 amended —

The clause was postponed on 23 August on the following amendment moved by Mr J.R. Quigley —

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

Mrs L.M. HARVEY: An amendment to clause 6 was moved by the member for Butler and it is on the notice paper. I discussed this amendment with the member for Butler and I believe that there is some merit in it. However, I have had insufficient time to progress the consequential amendments required to make it effective and consistent throughout the act. With the agreement of the member for Butler, I believe we have an agreement that he will withdraw this amendment and I have given an undertaking to the member for Butler that we will draft the necessary consequential amendments to enable his amendment to take effect and be introduced in the Legislative Council when it considers the bill.

Mr J.R. QUIGLEY: I accept the undertaking given by the minister. However, before the bill leaves the chamber, I want to clarify the consequential amendment that the minister is proposing. Is this amendment the cumulative provision in relation to other offences; and, if so, for how many of those other offences? I specifically came up with this amendment because it is separate from the driving offence. After the person has finished driving, the person has an obligation to report; and, if they do not report, that is separate from the driving offence and should be cumulative upon other offences. I do not know what is on the minister's mind in relation to the cumulative provisions.

Mrs L.M. HARVEY: Just to clarify and remind members of what this amendment effectively does, for an individual who is charged with several offences that attract a like disqualification period, instead of those disqualification periods being served concurrently, we are saying they should be served consecutively or cumulatively. People may be charged with two offences under two or more sections of the Road Traffic Act— for example, section 54, section 56 or section 59. We want to make sure that if we are asking for cumulative disqualification periods to be recognised by the court, that is consistent with other areas of the act that provide for disqualification periods that could be cumulative. I need a bit more time for the Parliamentary Counsel's Office to look at the drafting and make sure we get it correct. I have given an undertaking to the member for Butler that I will endeavour to do that. I understand the intent of the amendment and I think it has some merit. However, we have not had sufficient time, and in the interests of having this legislation passed through the Parliament, I will endeavour to get that amendment on the notice paper in the Legislative Council when it is debated in that place.

Amendment, by leave, withdrawn.

Clause put and passed.

Clauses 64 and 65 put and passed.

Clause 66: Section 117 amended —

Mrs L.M. HARVEY: I seek leave to move the amendments detailed on the notice paper to clause 66 en bloc.

Leave denied.

Mrs L.M. HARVEY: I move —

Page 42, line 14 – To delete "118A" and substitute —

"117A"

Mrs M.H. ROBERTS: I ask the minister to explain what the difference is. It might save time if the minister would, when moving each of these amendments, give us a brief explanation of why the amendment is necessary.

Mrs L.M. HARVEY: These amendments on the notice paper are consequential amendments to the point-to-point amendments on the notice paper that follow. In effect, the point-to-point amendments insert a new section 117. These consequential amendments deal with references to section 117 that are yet to be debated as an amendment by this house.

Mrs M.H. ROBERTS: Can I inquire why these amendments were not part of the bill from the start? Why are they separate amendments on the notice paper? Why has this been discovered so late in the piece?

Mrs L.M. HARVEY: Can I please bring in my adviser Mr John Pintabona for this section of the bill?

The ACTING SPEAKER (Mr P. Abetz): Sure.

Mrs L.M. HARVEY: I thank Sergeant Matthiessen for his assistance tonight. My adviser is John Pintabona from the Automated Traffic Enforcement program of Western Australia Police. I will explain to the house how these point-to-point amendments work and then I can clarify the reason that these amendments are placed in this way as part of that process. The government is currently running a point-to-point camera system trial. It allows for speed camera systems to measure average speeds between two or more cameras and it has the potential to produce a general effect beyond the localised single camera site. The published evaluation of these systems suggests that they are very effective at reducing speeds and casualty rates along the whole route upon which they are installed. The point-to-point trials have been implemented in New South Wales, Victoria, Queensland and South Australia. As part of the planned speed camera expansion, we will conduct a test along Forrest Highway. Amendments to the legislation are required to allow for the operation of point-to-point cameras as part of an overall speed enforcement strategy. WA Police currently operate speed-measuring equipment to determine the speed at which a vehicle is travelling at a particular point in time. However, the proposed use of point-to-point technology would not fall within the scope of speed-measuring equipment or distance-measuring equipment that may be approved under this legislation. These amendments to the road laws will give effect to point-to-point operations in WA. They will provide for a definition of average speed and the equipment and systems needed to measure average speed as a concept; the ministerial approval of the types of devices and/or systems needed to ascertain the average speed of a vehicle between two points; a definition for the calculation of average speed over both single-speed zones and multi-speed zones; and a definition of a multi-speed zone for the purposes of average speed. The amendments also allow the average speed to be proof of actual speed in an average speed zone. They provide for evidentiary certificates to be issued on the aspects of testing and operation of average speed measuring and recording equipment and for a surveyor's certificate to certify the shortest distance between the two cameras. They also provide for all drivers to be able to be held liable for the average speed offence in situations where drivers swap within an average speed zone. The point-to-point system will, hopefully, become fully operational at the completion of the feasibility trial, which we anticipate will be at the end of mid-2017.

The amendments on the notice paper effectively insert an additional provision into the Road Traffic Act to allow for point-to-point offences and clarify how that can occur. These amendments to clause 66, which are consequential amendments for references to the point-to-point trial, are required in order for the point-to-point amendments to make sense in the context of the sections within the Road Traffic Act.

Mrs M.H. ROBERTS: I thank the minister for that explanation. We are told that these amendments are needed for the point-to-point trial but we hope it will proceed to being more than a trial and that point-to-point cameras will be implemented in Western Australia, as they have been in all the states that the minister listed. That being the case, are these amendments sufficient to proceed beyond the trial?

Mrs L.M. HARVEY: Yes, they are. These amendments will enable point-to-point to go live, if you like, and allow us to issue an infringement notice to motorists who contravene the law over a point-to-point section of road.

Mrs M.H. ROBERTS: The previous minister wanted to implement point-to-point cameras. I think the minister announced well over a year ago that point-to-point cameras would be trialled. Tonight we are still discussing legislation that will enable the trial to proceed. We are now specifically dealing with one of the amendments to this clause. I just asked as a generality why these amendments needed to be put on the notice paper. Why were they not incorporated in the bill when the minister presented it to the house given that she had already committed to moving towards a trial for point-to-point cameras when she introduced the bill?

Mrs L.M. HARVEY: In effect, the amendments took a longer period to develop than we anticipated. It was decided that we would not delay the passage of the omnibus bill that we have been discussing over the last few days. We made a choice to put the point-to-point amendments on the notice paper rather than delay the introduction of the Road Traffic Legislation Amendment Bill.

Mrs M.H. ROBERTS: The specific amendment that we are looking at states —

Page 42, line 14 — To delete "118A" and substitute —

117A

What effect will that amendment have?

Mrs L.M. HARVEY: It effectively introduces provisions in the Road Traffic (Administration) Act relating to the approval and operation of speed measuring and recording equipment. Similar new provisions are being inserted into clause 67 of the Road Traffic Legislation Amendment Bill relating to average speed detection systems, requiring a restructure of the existing clauses. Some minor consequential changes for consistency of language and operation between the different types of equipment are being made. This amendment, in conjunction with the introduction of a new clause 68, will also relocate all transitional provisions.

Amendment put and passed.

The ACTING SPEAKER: Minister, you now need to move the next amendment.

Mrs L.M. HARVEY: Is leave granted to move the rest of these amendments en bloc?

The ACTING SPEAKER: Member for Midland, are you happy for the rest to be moved en bloc now or do you still want each one moved individually?

Mrs M.H. ROBERTS: I have already declined.

The ACTING SPEAKER: I am just asking, in light of the explanation that has been given. That is fine; I am just asking the question.

Mrs L.M. HARVEY: I move —

Page 43, line 10 — To delete "from" and substitute —

from,

Mr W.J. JOHNSTON: I see what is happening here. This is a very small grammatical correction. I wish my friend the member for Girrawheen was here because she is very good at grammar. I think two commas are needed to make this right. I understand the minister is trying to separate "retrieve data from" from "the equipment" so that there is a list. This could have been done by way of dot points of course or there could have been a semicolon and then a list at the end. The minister wants the subparagraph to state, "A person certified by the Commissioner of Police as being competent to install the equipment, to set up the equipment, to test the equipment or to retrieve data from the equipment". I think another comma is needed after "test"; otherwise "test or retrieve data" becomes one activity because the minister proposes to put a comma after "from". On the way the grammar is now constructed, a person would have to both test and retrieve the data. I think we also need a comma after "test"; otherwise it will read that each of those things is separate. "Test or retrieve" will be one item because the minister proposes to add a comma after "from". We need a comma after "test" and a comma after "from".

Mrs L.M. HARVEY: This is definitely one for the grammar Nazis! I am advised by Parliamentary Counsel's Office that the comma is required to be inserted as anticipated on the notice paper. I am loath to insert a comma before "or". I had an English teacher in primary school who would rap me over the knuckles for doing that. Whether or not that changes the context of "test or retrieve" and turns that into one action, I do not believe that is so. My interpretation from reading that is that it is "test or retrieve data from the equipment or produce images from the data". Member, I do not propose to insert more than one comma. I am advised by PCO that this is a simple grammatical amendment and people with far better standards of English than I have arrived at this amendment.

Mr W.J. JOHNSTON: I do not intend to delay the house very long on this issue. I have seen a wonderful T-shirt that says "I'm a Grammar Nazi: I'm secretly correcting your grammar"! I understand the minister is saying that if the second comma does not go in, "test or retrieve data from" would be two separate tasks. The moment a comma is put in after "from", because there is a comma in all those other places, it is "test or retrieve"—it becomes the one activity. Anyway, I look forward to the entertainment of seeing the courts trying to interpret it!

Mrs M.H. ROBERTS: As a former English teacher, I would point out that punctuation can change meaning. The minister has moved an amendment to change "from" to "from," because the placement of a comma changes meaning. It is not just a matter of correct grammar; it is a matter of meaning. In this sense, when it is part of legislation, it is about legal meaning to be interpreted by the courts; so it is important to get it right. I think the member for Cannington may be correct, but it depends how the minister wants this clause to be interpreted. My suggestion is that we will agree to this tonight, and that perhaps those learned persons the minister refers to who are both excellent at grammar and fully cognisant of the desired meaning and how they want it interpreted by the

courts could give this some consideration; and, if there needs to be a further punctuation change, it could be done in the upper house.

Amendment put and passed.

Mrs L.M. HARVEY: I move —

Page 44, line 18 — To delete "involving the driving of a vehicle,".

Mr W.J. JOHNSTON: What is the effect of the amendment?

Mrs L.M. HARVEY: This is a consequential amendment that will change the sentence at line 18 on page 44 of the bill, which effectively deals with proposed section 117(6). It will then state —

In a prosecution for an offence under a written law evidence may be given of —

(a) the use of speed measuring and recording equipment at a particular location; and

(b) the identity of the vehicle as recorded by that equipment at a particular time; and

(c) the speed at which the vehicle was moving as ascertained and recorded by that equipment at that time.

This is a consequential amendment to ensure that the point-to-point amendments that follow make sense.

Mr W.J. JOHNSTON: Clearly, the minister is saying that she wants to remove the words "involving the driving of a vehicle". Currently, the provision states —

In a prosecution for an offence under a written law involving the driving of a vehicle, evidence may be given of …

Now it will state —

In a prosecution for an offence under a written law evidence may be given of …

What is achieved by removing the words "involving the driving of a vehicle" when the provision in the Road Traffic (Administration) Act will be about speed measuring? I am not asking what the minister is doing, because we know that, but what is the purpose of it?

Mrs L.M. HARVEY: The amendment effectively opens this up to any offence rather than an offence limited to involving the driving of a vehicle.

Mr W.J. Johnston: So what sort of offence?

Mrs L.M. HARVEY: It is any offence.

Mr W.J. JOHNSTON: Can the minister give me an example of an offence to which the use of speed measuring and recording equipment at a particular location would be relevant?

Mrs L.M. HARVEY: We are allowing for any offence to be prosecuted, rather than those limited to involving the driving of a vehicle, with evidence from the use of speed measuring and recording equipment as outlined in paragraphs (a), (b) and (c) in proposed section 117(6). It is a consequential amendment.

Mr W.J. JOHNSTON: Could the minister give me two examples of offences, other than a driving offence, in which the use of speed measuring and recording equipment at a particular location might be important?

Mrs L.M. HARVEY: I am advised it could be stealing a motor vehicle. It does not necessarily involve driving a motor vehicle; so, something like that.

Amendment put and passed.

Mrs L.M. HARVEY: I move —

Page 44, line 22 — To delete "the vehicle" and substitute —

a vehicle

Mr W.J. JOHNSTON: What is the effect of the change?

Mrs L.M. HARVEY: The effect of this change and the next proposed amendment is to amend the definition of "vehicle" from being a particular vehicle to being a vehicle. It is a consequential amendment.

Mr W.J. JOHNSTON: I understand it is a consequential amendment and I understand that it is taking the specific word "the" and putting in the general word "a" —

Mrs M.H. Roberts: It's replacing the indefinite article with a definite article.

Mr W.J. JOHNSTON: Thank you very much, my schoolteacher friend!

That is what the minister is doing, but that is not what I asked. I asked: what is the effect of the change?

Mrs L.M. HARVEY: It makes sense of the previous amendment, by which we deleted the words "involving the driving of a vehicle,". We are now not referring to the driving of a vehicle; we are referring to evidence for any offence, and instead of identifying a particular vehicle, as was previously referred to in clause 6, it is now "a vehicle" rather than "the vehicle" that was being driven.

Amendment put and passed.

Mrs L.M. HARVEY: I move —

Page 46, lines 1 to 21 — To delete the lines.

Mrs M.H. ROBERTS: Minister, why do lines 1 to 21 need to be deleted?

Mrs L.M. HARVEY: These lines relate to transitional provisions, so this amendment deletes these provisions from this particular part of the legislation and we will be inserting them at a later point under new clause 68 on the notice paper.

Amendment put and passed.

Mrs M.H. ROBERTS: We are at the conclusion of the amendments to clause 66 and are dealing with it as a clause now amended. Can the minister assist me regarding clauses 66 and 67? The amendments on the notice paper have not been incorporated in the marked-up bill have they?

Mrs L.M. HARVEY: No.

Mrs M.H. ROBERTS: That is okay; I wanted to clarify that. The explanatory memorandum contains quite a lot and clause 66 is a very long clause. I turn to page 45 of the bill, where at clause 66(10) it states —

Delete section 117(8) and insert:

(8) In a prosecution mentioned in subsection (4), (5) or (6), a certificate purporting to be signed by the Commissioner of Police certifying that a specified person is, or was at the material time, a person certified by the Commissioner as being competent to —

(a) use distance measuring equipment; or

(b) use speed measuring equipment; or

(c) install, set up, test or retrieve data from, speed measuring and recording equipment or produce images from the data,

is prima facie evidence of the matters in the certificate, without proof of the signature of the person purporting to have signed it or proof that the purported signatory was the Commissioner.

It is getting very late. It refers to "a person certified by the Commissioner". I cannot see the definition of certified person. Who is a certified person, what are the qualifications of a certified person, and how are they appointed?

Mrs L.M. HARVEY: The definition sits under the definition of "authorised person". An authorised person in relation to distance measuring equipment means a police officer or a person certified by the Commissioner of Police as competent to use the equipment. An authorised person is someone who has been certified by the commissioner.

Mrs M.H. ROBERTS: Can the minister clarify whether a person who could be certified to use the equipment would be an employee of WA Police? Obviously, police officers are. I am not querying police officers using the equipment, their capacity or training or anything of that nature. I understand WA Police employ people who deploy Multanova speed cameras and the like; they are not police officers, but do they fit into the category of certified persons? Under this legislation or any other legislation, is it possible that those roles could be outsourced to people other than people employed by WA Police?

Mrs L.M. HARVEY: I am advised that at present police officers and other persons employed by WA Police are authorised to operate the equipment. The commissioner has also authorised other people to be certified to use the equipment, such as rangers in Kings Park. The owners and manufacturers of the equipment are also certified and authorised to use the equipment.

Mrs M.H. ROBERTS: Proposed section 118A(2) states —

For the purposes of subsection (1), the certificate is a certificate purporting to be signed by the Commissioner of Police, certifying that —

I will make some other points, but why is the word "purporting" included there? Either it is signed by the Commissioner of Police or it is not, or either it is signed by someone on behalf of the Commissioner of Police or it is signed by a delegated officer. Why is the word "purporting" used there? Perhaps it somehow broadens the opportunities. Would the minister explain that? Paragraph (b) states —

> The equipment was installed or set up by an authorised person, named in the certificate, in accordance with the approved procedure on a day specified …

Paragraph (c) states —

> The equipment was tested by an authorised person, named in the certificate …

And it continues. Those authorised persons named on the certificate might in fact be persons employed by the equipment manufacturer or someone outside WA Police; is that correct? Could the minister answer my question about the need for the use of the word "purporting" and what effect that will really have?

Mrs L.M. HARVEY: I am advised that the certificate is signed by the Commissioner of Police but that the signature is not verified, so the certificate is then purporting to be signed by the Commissioner of Police. That language is used on page 48 in proposed subsection (7). To answer the member's other question, yes, it includes other people. The manufacturers of the equipment can be certified as authorised persons to use the equipment.

Mrs M.H. ROBERTS: I still do not get this whole "purporting" issue. Does that mean anyone can sign any dodgy signature as long as it purports to be the signature of the Commissioner of Police? Could some senior constable just write "Karl O'Callaghan" and purport that it is his signature and pop it on there?

Mrs L.M. HARVEY: I am advised it means that it is the commissioner's signature. It is taken to be his signature unless it can be proved otherwise. Proposed subsection (2) states that for the purposes of proposed subsection (1) the certificate is a certificate purporting to be signed by the Commissioner of Police certifying a range of things. On page 49, proposed subsection (7) states —

> In a prosecution mentioned in section 117(6), it is to be presumed, in the absence of evidence to the contrary, that a certificate described in subsection (2) purporting to have been signed by the Commissioner of Police was so signed, without proof of the signature of the person purporting to have signed it or proof that the purported signatory was the Commissioner.

That is basically saying that the signature is the commissioner's and that we accept it is the commissioner's unless someone can prove to the contrary that it is a signature other than the commissioner's on the certificate.

Mrs M.H. ROBERTS: Why has the minister chosen to go this way and not potentially delegate the commissioner's authority to a range of senior officers, as often happens in other legislation?

Mrs L.M. HARVEY: I am advised that the purported signature does not prohibit the commissioner from delegating the authority. The commissioner can sign the certificate and the proof of the certificate's authenticity can be delegated to another officer, but it can be approved under the commissioner's signature.

Clause, as amended, put and passed.

Clause 67: Section 118A inserted —

Mrs L.M. HARVEY: I seek leave to move the amendments to clause 67 en bloc.

Leave denied for amendments to be considered together.

Mrs L.M. HARVEY: I move —

> Page 46, line 23 — To delete "**Section 118A inserted**" and substitute —
>
> **Sections 117A to 117I inserted**

Mrs M.H. ROBERTS: I advised the minister a short while ago that with respect to her amendments on the notice paper, we could save some time if we could get just a brief explanation of the meaning, import or necessity, or some explanation of the effect, of each amendment and why it is required.

The SPEAKER: Minister, would you like to explain the amendments as you go through? Member for Midland, it might be better if the minister explains the amendment in parts and if you want to say something, you can.

Mrs M.H. Roberts: Yes.

The SPEAKER: Does the minister want to start off?

Mrs L.M. HARVEY: Clause 67 introduces evidential provisions that relate to the use of images produced by speed measuring and recording equipment. The amendments to this clause introduce provisions to facilitate the approval, operation and evidence provided by an average speed-detection system. Once amended, clause 67 will

insert new sections 117B to 117I into the Road Traffic (Administration) Act. In effect, the lines we are considering that delete the words "Section 118A inserted" and substitute "Sections 117A to 117I inserted" are a consequential amendment to enable us to make other amendments to section 117B after this amendment has been considered.

Mrs M.H. ROBERTS: There are quite a lot of amendments to insert proposed sections 117A, 117B, 117C, 117D, 117E, 117F, 117G, 117H and 117I, which take up quite a lot of our notice paper. I wonder why all this detail needs to be placed on the notice paper, rather than being included in the bill. The minister is deleting new section 118A from her own bill.

Mrs L.M. Harvey: We are effectively renumbering them so we can insert the provisions and make them fit.

Mrs M.H. ROBERTS: Is section 118A that is proposed to be inserted the same section 118A that is printed in the consolidated Road Traffic (Administration) Act?

Mrs L.M. HARVEY: No; the clause we are considering at present is deleting the words "Section 118A inserted" and substituting "Sections 117A to 117I inserted". When we get further down in the amendments, the member will see that at page 48, after line 23, we will consider new section 117B, which has definitions for point-to-point cameras, and new section 117C, which details average detection systems. This amendment is effectively renaming a heading in the legislation so that the drafting is ordered.

Mrs M.H. ROBERTS: I am still seeking further clarity. The minister has moved under clause 67, at line 23 on page 46, to delete "Section 118A inserted" and substitute proposed section 117A. I am asking whether section 118A in this consolidated version of the Road Traffic (Administration) Act is the same section 118A that we are deleting.

Mrs L.M. HARVEY: No, member. This amendment we are considering deletes the heading and inserts a new heading.

Mr W.J. JOHNSTON: I think my friend wants to know why the minister is not proceeding to call it section 118A et cetera, but instead is calling it section 117A et cetera?

Mrs L.M. HARVEY: It is because subsequent amendments will renumber the sections as 117 and 118.

Mr W.J. Johnston: Why?

Mrs L.M. HARVEY: It is so that it makes sense and fits into the act.

Mr W.J. JOHNSTON: I cannot see the minister inserting anywhere in the bill proposed section 118A, which does not seem to exist anymore. There may be a good reason for not using 118A and for using 117A. I am just asking what is the good reason.

Mrs L.M. HARVEY: Section 117 of the Road Traffic (Administration) Act currently exists, and we are amending it. Section 118 is a section of the Road Traffic (Administration) Act and is not being amended. In order for this to flow effectively in the legislation, we are inserting proposed section 118A in between sections 117 and 118. It needs to be done in this fashion so we can have ordered consideration of the legislation and it fits with the appropriate format.

Mr W.J. JOHNSTON: I understand that a section 118A appears before section 118, because that is the way the legislation is drafted. At the moment, in the bill as presented, the minister is inserting section 118A after section 117. That means it is after 117, but before 118, which is the normal practice. The minister is now saying that after section 117, we will have section 117A and not section 118A. Instead of being before section 117 it is after 118.

Mrs L.M. HARVEY: It is because parliamentary counsel has changed the way it numbers, so it will be 117, and 118A will be replaced by 117A; it is just drafting. As I said, the amendment is changing the heading so that the drafting is consistent and makes sense.

Mr W.J. JOHNSTON: I agree. If that is the answer, that means that the bill as presented is not sensible and does not work. Does the minister see what I am saying?

Mrs L.M. HARVEY: That is not so, member. It has been subsequently amended, so it needed to be altered.

Mr W.J. JOHNSTON: Yes, but the minister said that the reason she was amending it from 118A to 117A was that calling it 118A does not make sense, but that is what she asked us to do.

Amendment put and passed.

Mrs L.M. HARVEY: I move —

Page 46, line 26 — To delete "**118A"** and substitute —

117A

Amendment put and passed.

Mrs L.M. HARVEY: I move —

Page 47, lines 7 and 8 — To delete "as defined in section 117(1)"

Mrs M.H. ROBERTS: Perhaps the minister would like to advise the house why the words "as defined in section 117(1)" need to be deleted.

Mrs L.M. HARVEY: With the consequential amendments, they are no longer relevant issues.

Mr W.J. JOHNSTON: At the moment, the legislation states "the equipment specified in the certificate was speed measuring and recording equipment as defined in section 117(1)". Now it will be undefined. Is there a need for a substitution, because section 117(1) sets out approved procedures, and the legislation no longer refers to that. Is the minister saying that even if it is speed-measuring equipment but it has not been dealt with in accordance with the procedures, it is still acceptable as speed-recording equipment?

Mrs L.M. HARVEY: These words are being deleted because the reference does not need to be made here, and this is being defined further on in proposed section 118A. I am advised that parliamentary counsel has determined that it is no longer necessary to point out where it is defined, because the legislation defines it.

Mr W.J. JOHNSTON: Other things happen in section 117. It is also about the authorised procedure et cetera, and the authorised person. It is actually not just a definition; it is a procedure. Where are those procedures being placed, because otherwise it is stating that the speed measuring and recording equipment is specified in the certificate, but what is the approval procedure that led to this certification?

Mrs L.M. HARVEY: The definition that will be inserted eventually is that speed measuring and recording equipment means apparatus of a type approved by the minister under section 117(2)(c).

Mr W.J. Johnston: Where is that?

Mrs L.M. HARVEY: We will get to that when we amend section 117.

Mr W.J. JOHNSTON: Sorry; I did not hear the minister.

Mrs L.M. Harvey: It has a further amending clause that we will come to.

Mr W.J. JOHNSTON: Whereabouts?

Mrs L.M. Harvey: It is in the bill under clause 66.

Mr W.J. JOHNSTON: It still does not fix the issue that I am raising with the minister. I am raising a separate issue with the minister.

Mrs L.M. Harvey: What is the issue that the member is raising? I do not understand what the member is raising. If the member could explain the issue, I would really appreciate it.

Mr W.J. JOHNSTON: Clearly, the minister does not understand. Excellent—for the third time I will say the exact same thing. The minister should read what she is deleting. Proposed section 117(1) is a procedure. It is a set of procedures.

Mrs L.M. Harvey: No.

Mr W.J. JOHNSTON: I have it in my hand. It refers to certain measuring equipment. Proposed section 117(1) states, in part —

approved procedure, in relation to setting up, installing, testing or retrieving —

Et cetera. Proposed section 117(1) further states —

authorised person …

(c) in relation to speed measuring and recording equipment, means —

Et cetera.

It is a definition of not only an issue, but a procedure. This amendment deletes the reference to the procedure and not only the reference to the definition. That is the point I am making.

Mrs L.M. HARVEY: I can understand the confusion. Proposed section 117(1) does not define a procedure. It is a definition section. Proposed section 117(1) has the definitions of "approved procedure", "authorised person", "distance measuring equipment" and "speed measuring equipment". Those definitions are referred to subsequently in further amendments on the notice paper and further in the act.

Mr W.J. Johnston: Whereabouts?

Mrs L.M. HARVEY: Throughout. Which definition? "Approved procedure" is referred to in this proposed section and proposed section 117A after the amendments are dealt with.

Amendment put and passed.

Mrs L.M. HARVEY: I move —

> Page 47, lines 18 and 19 — To delete "after the day on which the alleged offence took place;" and substitute —
>
> before the day on which the alleged offence was committed;

Mrs M.H. ROBERTS: Why does the minister need to move that amendment? Why is she changing the day?

Mrs L.M. HARVEY: The effect of this is that speed camera equipment was to be certified after an offence was committed. However, in keeping with other point-to-point legislation, it will now be certified before an alleged offence is committed. It guarantees a period in which the equipment has been certified before it is used.

Mrs M.H. ROBERTS: Therefore, minister, why does it not just say that it needs to be certified before it is used? The way it is now worded is, "before the day on which the alleged offence was committed". It sounds to me as though the equipment cannot be certified in the morning for a person who committed an offence in the afternoon.

Mrs L.M. HARVEY: This is equipment that is fixed. It is not necessarily touched. It will be tested, sometimes remotely. It is envisaged that the certification testing will occur annually. This is to ensure that a testing regime is in place and that that testing regime is certified so that we know that the equipment is operating as it is supposed to operate to ensure that any offences can be upheld.

Mr W.J. JOHNSTON: I have two questions, but I will ask them separately. The first question is: given that the minister is going to prescribe a number of days, what is the intention for the number of days that will be prescribed?

Mrs L.M. HARVEY: It will be in accordance with the manufacturer's instructions, but for the equipment that we currently have, it is 12 months.

Mr W.J. JOHNSTON: Thank you very much. The second question is: given that this legislation was approved by cabinet, why did cabinet give approval for testing of the equipment after the issue of an infringement? That would mean that at the time an infringement was issued, we would not know whether the infringement was valid. Why did cabinet agree to allow a situation in which the testing to see whether the issuing of the infringement was valid would occur only after the infringement was issued?

Mrs L.M. HARVEY: There was to be a different regime for different equipment. We have undertaken that all equipment will be tested before it is used.

Mr W.J. JOHNSTON: Yes, but that is not the question I asked. The question I asked is: how come cabinet approved a regime that would have stated that the police were going to be issuing infringement notices and then testing the equipment, rather than testing the equipment and then issuing infringement notices? Under that regime, cabinet could have agreed to hundreds and hundreds of infringements that were issued for faulty equipment.

Mrs L.M. HARVEY: Member, this is just saying that the equipment would come certified before we use it and would be certified every year.

Mr W.J. Johnston: I know exactly what it says.

Mrs L.M. HARVEY: It is a change in the regime—because the regime has changed with a different policy, we are changing the legislation.

Mr W.J. JOHNSTON: I will ask the question again. Let me make it clear. There is no regime. This is a bill, not an act, that the minister is seeking to amend. What I am asking is: what was in the mind of cabinet when it approved the procedure that infringement notices were to be issued and then the testing was to be done? Why did cabinet approve the words here, which create the bizarre situation in which hundreds and hundreds of infringement notices could have been issued that would never have been valid?

Mrs L.M. HARVEY: I am not going to discuss cabinet deliberations and why decisions were made. All I will say is that this is moving to a system in which we know that the equipment is certified and tested before we get it. We need to change these words to reflect what happens in practice, and that is what we are doing.

Mr W.J. JOHNSTON: Let me get this clear. I am not asking the minister what happened in cabinet. Did the minister ask cabinet to support a situation in which the certification is done only after the infringement notices are issued; and, if the minister did not do that, how did that get in the bill?

Mrs L.M. HARVEY: The member is fundamentally misunderstanding what I am saying, so I will just say that, yes, I have asked cabinet to approve all these amendments that sit before us.

Mr W.J. JOHNSTON: Is the minister saying that she did not ask cabinet to approve the bill?

Amendment put and passed.

Mrs L.M. HARVEY: I move —

Page 47, line 20 — To delete "day referred to in paragraph (c)," and substitute —

specified day referred to in paragraph (c) and on the day on which the alleged offence was committed,

Once again, this is a consequential amendment to ensure that the subsequent amendments on the notice paper flow appropriately.

Mr W.J. JOHNSTON: This is a very important amendment but it does not do what the minister says it does. This is about making sure that the equipment works at the time that infringement notices are issued. It is a very important amendment but it does not do what the minister says it does.

Mrs M.H. ROBERTS: The question is: why has the minister needed to change the day referred to in paragraph (c) and substitute it with another day? We realise it is a consequential amendment, but why?

Mrs L.M. HARVEY: We are bringing in a different system, a point-to-point system, so the language required to refer to that different system has changed. This amendment reflects that change.

Mr W.J. JOHNSTON: The minister has to actually work out what is happening. There is no point in just standing up and saying words. That is not what this amendment does. This is the minister's bill. This amendment is not doing what the minister says it does. This amendment does not amend an act; it amends the bill. It does not amend a regime; it amends a proposed regime. As I say, it is a very important amendment but it does not do what the minister says it does.

The SPEAKER: Do you have anything to say, minister?

Mrs L.M. Harvey: I have nothing to add.

Amendment put and passed.

Mrs L.M. HARVEY: I move —

Page 48, lines 1 to 5 — To delete the lines and substitute —

(4) A certificate under subsection (2) is not admissible in evidence in a prosecution mentioned in section 117(6) unless a copy of the certificate and a copy of the relevant image are given to the accused at least 28 days before the day on which the proceedings begin or within a shorter period that is agreed by the accused.

Mrs M.H. ROBERTS: Why was this provision not included in the minister's original bill?

Mrs L.M. HARVEY: It is in the original bill but it has been redrafted according to the provisions for the point-to-point system.

Amendment put and passed.

Mrs L.M. HARVEY: I move —

Page 48, lines 8 and 9 — To delete "or set out".

Mrs M.H. ROBERTS: Again, the minister has provided no explanation of why the words "or set out" at lines 8 and 9 need to be deleted. Lines 6 to 9 state —

(5) If a copy of the image and the certificate have been given as required by subsection (4), the accused cannot challenge or call into question a matter certified or set out in the certificate unless —

Why does the minister want to delete the words "or set out" so that the proposed new subsection will just read "call into question a matter certified in the certificate"?

Mrs L.M. HARVEY: I am advised that it is not required because there is nothing set out; it is all certified.

Mrs M.H. ROBERTS: Why was that put in the bill in the first place?

Mrs L.M. HARVEY: As I have said previously, we have amended the legislation as we have gone through so that it fits in with the provisions of the point-to-point trial.

Mr W.J. JOHNSTON: What provision does the words "or set out" not comply with in the bill?

Mrs L.M. HARVEY: As I just said, the matters are certified so there is no requirement to have the words "or set out" in the bill.

Mr W.J. JOHNSTON: Yes, I heard the minister say that but I also heard her say that the words "or set out" are no longer necessary because of other proposed changes. All I am asking is: what were those other changes?

Mrs L.M. HARVEY: The words are just not required. That is why we are seeking to delete them.

Mr W.J. JOHNSTON: I just go back to the question that the member for Midland asked: why did the words end up in the bill if they are not required?

Mrs M.H. ROBERTS: I have not really received an answer to my question. Under an alternative regime in which we did not have point-to-point cameras, the words "or set out" were apparently required. Why were those words required and why, when we are now going to point-to-point cameras in a different regime, are those words now not required? I know the minister is saying that we are under a different regime and therefore they are not required but there are many components to this; we are not just dealing with point-to-point cameras. Why were the words "or set out" put in the bill in the first place? What relevance did they have to any previous regime and why do they no longer have relevance?

Mrs L.M. HARVEY: The advisers who have been involved in the drafting of this legislation have said that it has been redrafted a number of times and it was determined on the final draft that these words were not required so we are requesting that Parliament approve their deletion.

Amendment put and passed.

Mrs L.M. HARVEY: I move —

Page 48, line 12 — After "proceedings" insert —

begin

Amendment put and passed.

Mrs L.M. HARVEY: I move —

Page 48, line 19 — To delete "described in" and substitute —

under

Mrs M.H. ROBERTS: Again, why is the minister deleting the words "described in" and why does she want to insert the word "under"? What effect will that have?

Mrs L.M. HARVEY: Once again, in one of the redrafts, it was determined by the drafters that the word "under" is better placed in the context of this legislation.

Mrs M.H. ROBERTS: Proposed new subsection (7) states —

> In a prosecution mentioned in section 117(6), it is to be presumed, in the absence of evidence to the contrary, that a certificate described in subsection (2) purporting to have been signed by the Commissioner of Police was so signed ...

If we accept this amendment, it will state —

> (7) In a prosecution mentioned in section 117(6), it is to be presumed, in the absence of evidence to the contrary, that a certificate under subsection (2) —

By deleting "described in", it would state "that a certificate under subsection (2) purporting to have been signed".

Mrs L.M. Harvey: That is correct.

Mrs M.H. ROBERTS: It seems to me that there is little difference between those two things. I really question the need for the amendment.

Amendment put and passed.

Mrs L.M. HARVEY: I move —

Page 48, after line 23 — To insert —

117B. Evidence of average speed as actual speed

(1) In this section and in sections 117C to 117I —

authorised person means —

(a) a police officer; or

(b) a person certified by the Commissioner of Police as being competent to install, set up, test or retrieve data from, an average speed detection system or produce images from the data;

average speed detection system means a system, comprising electronic equipment linked to an information technology system and computer programs, of a type approved by the Minister under section 117C;

carriageway means a portion of a road that is designed or ordinarily used for vehicular traffic;

detection points means the different points on a carriageway by reference to which the average speed of a vehicle is proposed to be calculated;

Minister means the Minister to whom the administration of the *Police Act 1892* is committed;

shortest practicable distance, that could be travelled by a vehicle on a carriageway between detection points, means the shortest distance between those points that a driver of the vehicle could have used to travel between the points without contravening any road law applicable to the driver.

(2) In a prosecution for an offence under any written law evidence may be given of —

(a) the use of an average speed detection system in respect of a particular location; and

(b) the identity of a vehicle as ascertained by that system at a particular time; and

(c) the average speed of a vehicle between detection points calculated in accordance with section 117D.

(3) The evidence referred to in subsection (2)(b) is prima facie evidence of the identity of the vehicle.

(4) The average speed of a vehicle referred to in subsection (2)(c) is prima facie evidence of the actual speed of the vehicle between the detection points.

(5) In a prosecution mentioned in subsection (2), evidence of the matters referred to in that subsection may be given in the form of an image of the vehicle on which is recorded —

(a) the location referred to in subsection (2)(a); and

(b) the time referred to in subsection (2)(b); and

(c) the average speed of the vehicle between detection points calculated in accordance with section 117D (which may have been calculated using an average speed detection system).

(6) In a prosecution mentioned in subsection (2), evidence by an authorised person that a system used in respect of a particular location was an average speed detection system is prima facie evidence of that fact.

(7) In a prosecution mentioned in subsection (2), a certificate purporting to be signed by the Commissioner of Police certifying that a specified person is, or was at the material time, an authorised person is prima facie evidence of the matters in the certificate, without proof of the signature of the person purporting to have signed it or proof that the purported signatory was the Commissioner.

(8) This section is in addition to, and does not derogate from, any other mode of proof of the speed of a vehicle.

117C. Average speed detection systems

(1) The Minister may, from time to time, by notice published in the *Gazette*, approve types of average speed detection systems for the purposes of —

(a) ascertaining the average speed of a vehicle between detection points; and

(b) recording —

(i) an image of the vehicle; and

(ii) the date on which the image was recorded; and

(iii) the time and location at which the image was recorded.

(2) The Minister may, by notice published in the *Gazette*, revoke an approval under subsection (1).

117D. How average speed is to be calculated

The average speed of a vehicle between detection points is to be calculated in accordance with the following formula and expressed in kilometres per hour rounded down to the next whole number —

$$\frac{D_T \times 3600}{T}$$

where —

D_T is the total shortest practicable distance, expressed in kilometres and rounded down to 2 decimal places, that could be travelled by a vehicle on a carriageway between the detection points;

T is the time, expressed in seconds, that elapsed between the vehicle passing the first and last detection points.

117E. How average speed limit is to be calculated

The average speed limit for a driver of a vehicle on a carriageway between detection points in circumstances where more than one speed limit applied to the driver between those points is to be calculated in accordance with the following formula and expressed in kilometres per hour rounded up to the next whole number —

$$\frac{D_T}{\frac{D_1}{S_1} + \frac{D_2}{S_2} + \ldots \frac{D_n}{S_n}}$$

where —

D_T is the total shortest practicable distance, expressed in kilometres and rounded down to 2 decimal places, that could be travelled by a vehicle on a carriageway between the detection points;

$D_1, D_2 \ldots D_n$ are each part of the total shortest practicable distance D_T between the detection points, expressed in kilometres and rounded down to 2 decimal places, for the different speed limits $S_1, S_2 \ldots S_n$ that would have applied to the driver of the vehicle between the detection points;

$S_1, S_2 \ldots S_n$ are each of the speed limits, expressed in kilometres per hour, that would have applied to the driver of the vehicle if the vehicle were travelling along the shortest practicable distance D_T on a carriageway between the detection points.

117F. Evidence of, proceedings for, certain matters related to evidence of average speed

(1) The following provisions apply in a prosecution mentioned in section 117B(2) —

(a) for the purposes of calculating the vehicle's average speed and any average speed limit, the vehicle and any of its drivers are to be taken to have travelled between the detection points by means of the shortest practicable distance between those points regardless of the actual route taken by any of the drivers between the points;

(b) if more than one speed limit applied to a driver of a vehicle between detection points —

(i) the average speed limit for the driver on a carriageway between the points calculated in accordance with section 117E is to be taken (subject to section 117B(8)) to be the speed limit that applied to the driver at all times on the carriageway between those points; and

(ii) a driver of, and any responsible person for, the vehicle may be dealt with under a road law accordingly;

(c) if there was more than one driver of the vehicle between the detection points, each driver is to be taken to have driven the vehicle at the average speed of the vehicle calculated in accordance with section 117D, except as provided by subsection (2).

(2) Subsection (1)(c) does not apply to a driver —

(a) who satisfies the court that he or she did not, at any time whilst driving the vehicle between the detection points, drive at a speed that exceeded the speed limit applicable to that driver; or

(b) in prescribed circumstances.

(3) If there is evidence of the average speed of a vehicle between detection points calculated in accordance with section 117D, one or more drivers of the vehicle may be prosecuted for, and found guilty or convicted of, an offence in respect of which the evidence was given.

117G. Evidentiary provisions for images recorded by average speed detection systems

(1) If, in a prosecution mentioned in section 117B(2), evidence is given in the form of an image as described in section 117B(5) and the image is accompanied by a certificate under subsection (2), the image —

(a) is to be accepted as having been recorded as described in section 117B(5), unless there is evidence to the contrary; and

(b) is prima facie evidence of the matters shown in or recorded on the image.

(2) For the purposes of subsection (1), the certificate is a certificate purporting to be signed by the Commissioner of Police certifying that —

(a) the system, specified in the certificate, was an average speed detection system; and

(b) components of the system were tested by an authorised person, named in the certificate, in accordance with the approved procedure on a day, specified in the certificate, that was within the prescribed number of days (for each component) before the day on which the alleged offence was committed; and

(c) on the specified day referred to in paragraph (b) and on the day on which the alleged offence was committed, the components were operating properly and were accurate; and

(d) data obtained from the system was obtained by an authorised person, named in the certificate, in accordance with the approved procedure; and

(e) the image was produced by an authorised person, named in the certificate, in accordance with the approved procedure, from data obtained from the system.

(3) In subsection (2) —

approved means approved by the Commissioner of Police.

(4) A certificate under subsection (2) may also certify any one or more of the following matters —

(a) the average speed calculated in accordance with section 117D at which the vehicle travelled between detection points (which may have been calculated using the average speed detection system);

(b) if one speed limit applied to a driver of the vehicle between detection points (measured along the shortest practicable distance), the speed limit;

(c) if more than one speed limit applied to a driver of the vehicle between detection points (measured along the shortest practicable distance) —

(i) each distance for which each speed limit applied to the driver, expressed in kilometres and rounded down to 2 decimal places; and

(ii) the average speed limit calculated in accordance with section 117E that applied to the driver between the detection points (which may have been calculated using the average speed detection system).

(5) The certificate is prima facie evidence of the matters in it.

(6) In a prosecution mentioned in section 117B(2), it is to be presumed, in the absence of evidence to the contrary, that a certificate under subsection (2) purporting to have been signed by the Commissioner of Police was so signed, without proof of the signature of the person purporting to have signed it or proof that the purported signatory was the Commissioner.

117H. Certificate evidence as to shortest practicable distance

(1) In this section —

licensed surveyor has the meaning given in the *Licensed Surveyors Act 1909* section 3(1).

(2) In a prosecution mentioned in section 117B(2), a certificate purporting to be signed by a licensed surveyor certifying any one or more of the following matters is prima facie evidence of the matters that are certified, without proof of the signature of the person purporting to have signed it or proof that the purported signatory was a licensed surveyor —

(a) the shortest practicable distance, expressed in kilometres and rounded down to 2 decimal places, that could be travelled by a vehicle on a carriageway between detection points;

(b) if more than one speed limit between detection points applied (measured along the shortest practicable distance), each distance for which each speed limit applied, expressed in kilometres and rounded down to 2 decimal places.

117I. Certificate, image copies to be given before proceedings

(1) A certificate of the Commissioner of Police under section 117G is not admissible in evidence in a prosecution mentioned in section 117B(2) unless a copy of the certificate and a copy of the relevant image are given to the accused at least 28 days before the day on which the proceedings begin or within a shorter period that is agreed by the accused.

(2) A certificate of a licensed surveyor under section 117H is not admissible in evidence in a prosecution mentioned in section 117B(2) unless a copy of the certificate is given to the accused at least 28 days before the day on which the proceedings begin or within a shorter period that is agreed by the accused.

(3) If a copy of a certificate has been given as required by subsection (1) or (2), the accused cannot challenge or call into question a matter certified in the certificate unless —

(a) notice in writing of the accused's intention is given to the prosecutor at least 14 days before the proceedings begin; or

(b) the court, in the interests of justice, gives the accused leave to do so.

(4) A notice under subsection (3)(a) must specify the matter that is to be challenged or called into question.

Mrs M.H. ROBERTS: I notice that these five and a half pages of amendments will be inserted at the end of the bill. Frankly, this is longer than some bills before the house. It is quite detailed. It really begs the question why the minister did not just proceed with the Road Traffic Legislation Amendment Bill (No. 2) last year without this in it and introduce a second bill on point-to-point cameras. The minister almost has a separate amending bill in what she has on the notice paper in what she is adding as a single amendment at the end of the bill. I have some questions with respect to this very long, five and a half page insertion. I start at page 13 of the notice paper. Under the definition of "minister", it states —

means the Minister to whom the administration of the Police Act 1892 is committed;

Correct me if I am wrong, the amendments before us are to the Road Traffic (Administration) Act 2008; is that right?

Mrs L.M. Harvey: Yes.

Mrs M.H. ROBERTS: Is that act allocated to the Minister for Transport or to the Minister for Road Safety?

Mrs L.M. Harvey: The Minister for Transport.

Mrs M.H. ROBERTS: The Road Traffic (Administration) Act, which is allocated to the Minister for Transport, is being amended, but the request in this amendment on the notice paper is that the minister referred to is the minister to whom the administration of the Police Act 1892 is committed. The real effect is that it is committed to the Minister for Police. I cannot imagine a circumstance in which the Police Act 1892 would be allocated to anyone other than the Minister for Police. What is the minister's explanation for that? Why should not the minister referred to here be the minister who is actually responsible for the Road Traffic (Administration) Act—

that is, the Minister for Transport—or, alternatively, why should it not be the Minister for Road Safety or the minister to whom the Road Traffic (Administration) Act is allocated? As I pointed out last night, there could be a circumstance in which the government of the day determines to allocate the road safety portfolio to a minister other than the Minister for Police. That occurs in many other states. It has happened here previously. Firstly, can the minister explain why she did not make the choice that it should go to the Minister for Transport and, further, why the choice should not be made to allocate it to the minister with responsibility for the Road Traffic (Administration) Act, who may in the future be the Minister for Road Safety? Alternatively, why would it not be allocated to the minister with responsibility for road safety rather than police? I think this just presumes that the Minister for Road Safety and the Minister for Police are one and the same.

Mrs L.M. HARVEY: Not necessarily, member. The reason that the minister in this proposed section means the minister to whom the administration of the Police Act 1892 is committed is that the references to the minister in the subsequent proposed sections relate to the authorisation of the speed-detection equipment and systems that the Minister for Police is appropriately authorising for use via the Commissioner of Police for speed detection.

Mrs M.H. ROBERTS: I put it to the minister that that could just as appropriately be done by a Minister for Road Safety who was not the Minister for Police. That is my whole point. Any Minister for Road Safety can get advice from a whole range of sources, but, ultimately, I think it would be very wrong if there were in the future a Minister for Road Safety separate from the Minister for Police and the Minister for Police made these determinations rather than the Minister for Road Safety.

Mrs L.M. HARVEY: As we discussed yesterday, the decision has been made by government that the Minister for Police is the appropriate minister to certify the equipment that police use and ensure that a regime is in place to have that equipment tested et cetera. That is a decision of government. People may have different opinions, but that is the decision we have made and why the minister referred to in this proposed section is the minister to whom the administration of the Police Act is committed.

Mr W.J. JOHNSTON: I wonder whether the minister is going to provide an explanatory memorandum for this very long amendment in the same way as she has provided an EM for the bill itself.

Mrs L.M. HARVEY: I have some explanatory memoranda here that I am happy to table and provide copies of. I apologise. I thought that that had already been provided.

[See paper 4462.]

Mrs M.H. ROBERTS: In the interim, while that is being copied and provided to us, perhaps the minister could answer some questions in general terms about some of the detail. We can see all the proposed sections to be inserted—proposed section 117C, "Average speed detection systems"; proposed section 117D, "How average speed is to be calculated", which has some formulas and so forth; and proposed section 117E, "How average speed limit is to be calculated". Obviously, they are all very important for point-to-point cameras. Are these models for how the average speed is to be calculated, how the average speed limit is to be calculated and so forth based on formulas used in any particular state of Australia or other states of Australia generally? Basically, do they mirror legislation put in place in other states for the calculation of average speeds; and, if so, which states?

Mrs L.M. HARVEY: Yes they do, and they mirror the formulae that are used in New South Wales, Victoria and South Australia.

Mr W.J. JOHNSTON: I refer to propose section 117E and the formula to allow for the averaging of speed limits over a distance. I just want to seek clarification about the way this works. I particularly draw the minister's attention to the explanation below the formula and the middle paragraph after "where —". The explanatory paragraph states —

> D_1, D_2 ... D_n are each part of the total shortest practicable distance D_T between the detection points, expressed in kilometres and rounded down to 2 decimal places, for the different speed limits S_1, S_2 ... S_n that would have applied to the driver of the vehicle between the detection points;

Is it correct that we would need to have the detection points at a point at which a speed limit changed? Am I right in my supposition? Otherwise there might be a difficulty in calculating S_1 and S_2 et cetera.

Mrs L.M. HARVEY: The cameras are placed at each end of the trial section of road and a surveyor then measures the distance between where the camera is placed and where the change in speed limit occurs. For a multiple zone, if there is, say, an 80-kilometre-an-hour section, a 50-kilometre-an-hour section and an 80-kilometre-an-hour section, those lengths of road are measured and the calculation takes the average speed. Should a person have been travelling at the average speed in those zones, or the appropriately posted speeds, we know then that if they are travelling at the speed over distance for the 80-kilometre-an-hour zone, the 50-kilometre-an-hour zone and then, say the 80-kilometre-an-hour zone, they should cover the distance between

the entrance camera and the exit camera in a certain amount of time. If they come in under that time, we know they have exceeded the speed limit, and there is a formula to calculate how far over the speed limit they were, or how far under the speed limit they were, in which latter case there would not be an infringement anyway.

Mr W.J. JOHNSTON: I do not know where these cameras are going to be located, but let us say they are located on Forrest Highway, as an example. Forrest Highway is a 110-kilometre-an-hour zone for most of its length, but if one is coming north there is an 80-kay zone near the old highway exits on the left. If we are measuring that distance—let us say 20 kilometres that includes the 80-kays zone, which is one kilometre—that is five per cent of the distances at the lower speed limit; therefore, the average speed should be five per cent less than 110 kilometres an hour. The speed could be less than 110 kilometres an hour over the 20 kilometres, but actually that is because they have done the same speed the whole time, which means that in the 80-kays zone they were speeding, but on average it is still okay. That is the problem if we do not have the detection zones within the same speed limit.

Mrs L.M. HARVEY: Effectively, the trial is in a zone where the speed limit is 110 kilometres an hour. However, should we put these cameras in places where there are multiple speed limits, this formula sets out what the average speed limit should be over that distance. If the driver travels above the average speed limit, they will be infringed.

Mr W.J. JOHNSTON: But there is no such thing as an average speed limit.

Mrs L.M. Harvey: We are introducing it here for the purpose of point-to-point.

Mr W.J. JOHNSTON: The reality is that a person would not be infringed even though they sped. It is a matter of mathematics. If there is a high speed and a low speed in the same detection zone, maths tells us—it is as simple as that—there is absolutely no alternative. Someone could match the proposed section 117E average speed limit but still actually speed. There is absolutely no argument about this; it is simply a mathematical truth. I am not saying we should withdraw the legislation because of that but I make the observation that it is a simple mathematical truth. If we can accept that mathematical truth, I will not ask any further questions on this topic.

Mrs L.M. HARVEY: Just to clarify that it is a mathematical truth; in effect, if someone in a 100 kilometre zone, an 80 kilometre zone and a 100 kilometre zone, they could travel at 80, 100 and 80 and perhaps achieve the average speed. But just because a point-to-point trial is being held, that does not mean that in an area that is speed limited as part of that trial—for example, a town where there is a lower speed limit—we could not also place a speed camera in the zone to infringe people who choose to exceed the speed limit at certain points.

Mrs M.H. ROBERTS: Cameras are to be inserted at the start and finish of the zone; they can take photographs of vehicles, their numberplates and the like. One of the concerns in the past has been the penalty for obscuring a numberplate being lesser than speeding fines. Can the minister advise the penalty for an obscured or largely unreadable numberplate?

Mrs L.M. HARVEY: At present, the penalty for obscuring a numberplate is $1 000. However, we are working towards increasing that and it will occur in the near future.

Mrs M.H. Roberts: Are demerit points associated with it or not?

Mrs L.M. HARVEY: No.

Mrs M.H. ROBERTS: I think that is an oversight and something that should have been addressed in this bill. When introducing this kind of regime, yes $1 000 is a significant fine for obscuring a numberplate but if someone is exceeding the speed limit by 30 kilometres an hour or whatever, presumably, they will get not only a fine of that order, but also probably lose at least six demerit points and potentially lose their licence, especially if they have already lost some demerit points. If they do that during a double-demerit weekend, it would cause a loss of licence. If someone wants to drive at excessive speeds to get from point A to point B down the Forrest Highway or wherever, there appears to be some incentive for them to obscure their numberplate, and risk the $1 000 fine rather than risk losing their licence and having probably a greater fine, I think of up to $1 200, for certainly doing some of the higher level speeding that unfortunately too many people do. Can the minister consider that as the bill goes through the upper house, because with increased speed detection, more people may obscure numberplates? While driving around on a daily basis, I notice numberplates that are been partly obscured, seemingly somehow faded, non-existent or difficult to read. That should not provide a way for people to get around speeding fines, the accumulation of demerit points or the loss of a licence.

Mr W.J. JOHNSTON: Other states have point-to-point gantries over roads. I understand they are also used to check driver fatigue management in heavy vehicles. I know that is not included in this provision, but has the government considered this?

Mrs L.M. HARVEY: That is one area we are testing with the equipment.

Amendment put and passed.

Clause, as amended, put and passed.

New clause 68: Part 9 Division 2 replaced —

Mrs L.M. HARVEY: I move —

Page 48, after line 23 — To insert —

68. Part 9 Division 2 replaced

Delete Part 9 Division 2 and insert —

Division 2 — Transitional provisions arising from certain amendments made by the *Road Traffic Legislation Amendment Act (No. 2) 2015*

166. Terms used

In this Division —

commencement day means the day on which the *Road Traffic Legislation Amendment Act (No. 2) 2015* section 66 comes into operation;

RT(A) Act means the *Road Traffic (Administration) Act 2008* as in force before commencement day.

167. Approval of apparatus for ascertaining vehicle speed

An approval under the RT(A) Act section 117(2) that was in effect immediately before commencement day is, on and from commencement day, to be taken to be an approval for the purposes mentioned in section 117(2)(a).

168. Approval of apparatus for ascertaining distances on roads

An approval under the RT(A) Act section 117(3) that was in effect immediately before commencement day is, on and from commencement day, to be taken to be an approval for the purposes mentioned in section 117(2)(b).

169. Certain authorised persons to be authorised persons for speed measuring and recording equipment, average speed detection systems

(1) In this section —

speed measuring equipment has the meaning given in the RT(A) Act section 117(1).

(2) A person who, immediately before commencement day, is a person certified by the Commissioner of Police as being competent to use speed measuring equipment is, on and from commencement day, to be taken to be a person certified by the Commissioner of Police as being competent to install, set up, test and retrieve data from speed measuring and recording equipment as defined in section 117(1) and produce images from the data.

(3) A person who, immediately before commencement day, is a person certified by the Commissioner of Police as being competent to use speed measuring equipment is, on and from commencement day, to be taken to be a person certified by the Commissioner of Police as being competent to install, set up, test and retrieve data from an average speed detection system as defined in section 117B(1) and produce images from the data.

Mrs M.H. ROBERTS: Again I ask why we need to insert a new clause.

Mrs L.M. HARVEY: This new clause will delete a redundant head of power in the Road Traffic Administration Act to make amendments to regulations under any act to do with matters consequential to the commencement of the act. The member will recall that earlier we deleted transitional provisions. This new clause will insert new transitional provisions, which are detailed on the notice paper. These transitional provisions deal with matters arising from the commencement of amendments made by the Road Traffic Legislation Amendment Bill (No. 2) 2015, in particular matters that arise from amendments to legislation concerning the approval and operation of speed and distance measuring apparatus. Included at section 168(3) is a transitional provision providing for persons certified by the Commissioner of Police to be competent to use speed measuring equipment to also be certified to install, set up, test and retrieve data from an average speed detection system.

Mr W.J. JOHNSTON: It means that in proposed sections 169(2) and (3), because those people are automatically certified, they will be certified without necessarily proving they are capable of using the equipment. That is an unusual situation. Perhaps it will be easier for me to ask now, rather than having to ask the same question a number of times, for an assurance that people will not be allowed to use the equipment even when they are certified under this provision without having been trained.

Mrs L.M. HARVEY: Indeed, they need to be certified by the commissioner to be competent to use the equipment. The commissioner needs to satisfy himself that they are competent to use it before he certifies it. That obviously involves training in the use and maintenance of the equipment.

Mr W.J. JOHNSTON: That is not right because proposed new subsection (2) states —

> A person who, immediately before commencement day, is a person certified by the Commissioner of Police as being competent to use speed measuring equipment is, on and from commencement day, to be taken to be a person certified by the Commissioner of Police as being competent to install, set up, test and retrieve data from speed measuring and recording equipment as defined in section 117(1) and produce images from the data.

That is a broader range tasks than was previously allowed. Indeed, proposed new subsection (3) states —

> A person who, immediately before …

Blah, blah, blah, is —

> to be taken to be a person certified by the Commissioner of Police as being competent to install, set up, test and retrieve data from an average speed detection system as defined …

The minister's answer was wrong. I do not want to get into a big up-and-down argument about it. All I am asking for is an assurance that the Commissioner of Police will make sure that people are trained before they do the job because this provision explicitly states that people are automatically certified, even if they have done nothing to gain that certification.

Mrs L.M. HARVEY: I am saying that the people in Western Australia Police who are currently certified and trained to use the equipment are the same people who will be trained and certified to use the new equipment. There is existing equipment and new equipment. They will all be trained and certified to use the equipment. I am not sure whether that satisfies what the member is asking.

Mr W.J. Johnston: Rather than me jumping up again, can the minister stay up and just say that she will make sure that the commissioner trains everybody before they use the equipment? Then I will be happy.

Mrs L.M. HARVEY: That is our protocol; I am happy to say that, yes.

Mr W.J. Johnston: It's not in the legislation.

Mrs L.M. HARVEY: The commissioner absolutely ensures that people are trained and competent to use all the equipment provided by police.

Mr W.J. Johnston: Excellent, because it is not in the legislation.

Mrs M.H. ROBERTS: Can the minister advise me whether Western Australia Police currently propose to outsource the management of the point-to-point cameras?

Mrs L.M. HARVEY: No, it does not.

Mrs M.H. ROBERTS: Can the minister assure the house that the tender that has been out for the point-to-point cameras is just for the provision of equipment not for the operation of the equipment by an outsourced company?

Mrs L.M. HARVEY: The equipment for the current tender is being operated as a trial system. The equipment is being maintained and serviced by the vendor but the system is operated by WA police from the traffic enforcement section.

Mrs M.H. ROBERTS: Is that proposed to continue into the future?

Mrs L.M. HARVEY: It may change, but there is no proposal to change that at this point in time.

New clause put and passed.

Title put and passed.