ROAD TRAFFIC LEGISLATION AMENDMENT (DISQUALIFICATION BY NOTICE) BILL 2010

Second Reading

Resumed from 17 November.

HON ALISON XAMON (East Metropolitan) [11.27 am]: Last night I was going through issues relating to the Royal Commission into Aboriginal Deaths in Custody. I was specifically looking at the issue of alcohol use and the recommendations. I referred to recommendations 70, 71 and 287, amongst others. Recommendation 70 states —

> That organisations developing policies and programs addressing Aboriginal alcohol issues:
>
> a. Recognise the inadequacy of single factor explanations (such as the disease model of problematic alcohol use) of the causes of alcohol dependence and misuse among individuals; and
>
> b. Take into account the fact that multiple explanations are necessary to explain the causes of alcohol misuse and related problems at the community level. It is therefore inappropriate to focus too strongly on any one explanation to the exclusion of others.

Recommendation 71 states —

> That research funding bodies consider commissioning or otherwise sponsoring research investigating Aboriginal conceptualisation's of the nature and causes of alcohol dependence and misuse and the prevention, intervention and treatment approaches which stem from these.

Recommendation 287 states —

> That the Commonwealth, States and Territories give higher priority to the provision of alcohol and other drug prevention, intervention and treatment programs for Aboriginal people which are functionally accessible to potential clients and are staffed by suitably trained workers, particularly Aboriginal workers. These programs should operate in a manner such that they result in greater empowerment of Aboriginal people, not higher levels of dependence on external funding bodies.

The point was that the impact of a driving disqualification does not have the same impact on everybody. For example, the member for Kalgoorlie in the other place pointed out that in the lands at times it has actually been impossible to get a driver's licence in some communities; therefore, that is now being addressed and I note that it is a matter that my colleague Hon Giz Watson raised at the briefing.

People outside the metropolitan area have fewer alternatives to driving than city dwellers. Clearly they lack public transport and taxis, and they must travel longer distances to access essential services, such as medical services. That precludes travel by foot or bicycle because, even when people are walking relatively short distances, it is not an alternative in places where temperatures are frequently over 40 degrees. For Aboriginal people, in addition to the ordinary essential travel needs experienced by almost everyone, such as for employment and medical purposes, travel is also essential for cultural reasons. This has been noted in a submission from the Aboriginal Legal Service, which I understand has been made available to all members of Parliament.

I will refer to the issues the Greens (WA) have with some provisions of the bill. It is proposed in clause 4 of the bill, and in consequential amendments in other clauses, that the Commissioner of Police will be able to delegate powers under the Road Traffic Act. This provision mirrors part 2, section 9 of the not yet operative Road Traffic (Administration) Act 2008 and hence is an interim measure pending that part coming into operation. I understand from the briefing and the explanatory memorandum that the reason large parts of that act are not already in operation is that commencement is to coincide with the commencement of various other legislation, some of which has not yet been passed. However, the Greens (WA) support this provision.

Clause 6 of the bill refers to a discretion to arrest without warrant for driving or attempting to drive with a blood alcohol level of more than 0.08 per cent, or for refusing to provide a sample for breath content analysis, referred to in clause 10. Before it was repealed in 2006, section 43 of the Police Act granted police a broad discretion to apprehend a person without a warrant. The 2006 amending legislation resulted in the Criminal Investigation Act, which deleted the provision. The power of arrest without warrant is now contained in the Criminal Investigation Act which allows it in respect of serious offences; that is, offences that have a statutory penalty of imprisonment for five or more years, and also in respect of other offences provided that certain conditions are met. I note that when the former government introduced the Criminal Investigation Act, the definition of a serious offence included offences specified by regulation, but this was amended by the Greens and the then opposition, and I note that this is why the government has had to include these clauses in this bill.

Regarding clause 6, it can be argued that driving or attempting to drive with a blood alcohol level of .08 or more is an offence that has something in common with some offences for which the legislature already permits arrest without a warrant; for example, causing fear and alarm to people in other conveyances by causing an object—in this case a vehicle—to be directed at or near, or to be placed in or near the path of, a conveyance that a person is driving, and acts or omissions by which the life, health or safety of any person is likely to be endangered. On the other hand, however, the offence referred to in clause 6 currently does not attract a penalty of imprisonment. The penalties are set out in section 64 of the Road Traffic Act, and constitute a fine and disqualification from driving, the length of the disqualification depending on the offender's blood alcohol content and whether the offence is a repeat offence, yet this clause would empower police to take an alleged offender into custody via the arrest process.

Regarding clause 10, refusing to provide a BAC sample is an effective way of concealing evidence of an offence if the driver is over the limit. It can be argued that there is, therefore, a certain amount of common ground in some offences for which the legislation already permits arrest without a warrant; for example, the destruction of evidence. Refusing a BAC sample also enables such a driver to continue driving, potentially endangering himself or herself and others. On the other hand, if the person is not in fact over the limit but is simply uncooperative, which is always a possibility, and the person is not a risk to himself or herself and the public, the clause would effectively authorise arrest without warrant for non-compliance with a police direction. There is no requirement in the wording of the clause that the arresting police officer must have formed a reasonable suspicion—that is, based on the person's driving, or smell of alcohol on the person or in the car, or finding items such as open containers of alcohol in the vehicle—that the person really is driving with a BAC above the level permitted by the act. Further, the offence is one that cannot attract a penalty of imprisonment unless it is a second or subsequent offence—even then we are talking about nine months or 18 months respectively—and only attracts a penalty of imprisonment for five or more years if the police officer believes the vehicle has been involved in an incident in which someone has been killed or suffered grievous bodily harm or bodily harm.

Section 128(3) of the Criminal Investigation Act also grants a power of arrest without warrant in circumstances in which an officer reasonably suspects —

(a) that the person has committed, is committing, or is just about to commit, the offence; and

(b) that if the person is not arrested —

(i) it will not be possible, in accordance with law, to obtain and verify the person's name and other personal details;

(ii) the person will continue or repeat the offence;

(iii) the person will commit another offence;

(iv) the person will endanger another person's safety or property;

(v) the person will interfere with witnesses or otherwise obstruct the course of justice;

(vi) the person will conceal or disturb a thing relevant to the offence; or

(vii) the person's safety will be endangered.

Given the wealth of evidence that I referred to yesterday evening that driving with a BAC of .08 or more endangers the safety and property of both the driver and others, this provision lends support to clause 6. It could be argued that the police already have that arrest power, but this clause makes it very clear that they do. However, section 128 does not lend support to clause 10 unless clause 10 is amended to limit the arrest power to circumstances of reasonable suspicion that the person is drink-driving, not merely non-compliant. Certainly an amendment in this circumstance would be appropriate.

I refer to the elimination of the right to elect to give a blood sample by one's choice of doctor or nurse instead of giving a breath sample. Drivers currently have the right to elect to provide a blood sample via their own choice of medical practitioner or registered nurse instead of a breath sample in the case of alcohol analysis, or an oral fluid sample in the case of illicit drug analysis. The Greens were advised at the briefing that such an election cannot always be implemented in the four hours that the Road Traffic Act permits for a sample to be taken and the driver's regular medical service may not be open or have an appointment available. The act currently addresses this by permitting police to nominate a medical practitioner or registered nurse to take the blood sample if there are reasonable grounds to believe that the one nominated by the driver is not available to take the sample. However, the Greens were advised at the briefing that the police do not necessarily have any better success at locating a medical practitioner or registered nurse to assist; and I am not particularly surprised by that.

While booze buses have a nurse in attendance, if the driver is pulled over elsewhere, especially after hours, it can be hard to find a qualified person to take the sample. Apparently some hospitals prioritise patients with urgent medical conditions over drivers attending to provide a blood sample for analysis; and I cannot say that I would fault the hospitals for making those decisions. Thus a driver's election to provide a blood sample instead of a breath or oral fluid sample can result in no sample at all being taken within the four-hour time limit imposed by the act. The bill aims to close this loophole by removing the driver's ability to choose which type of sample to give and to nominate the medical practitioner or registered nurse to take it. Instead, police will choose which kind of sample is required for the reasons already discussed; and I note that this would usually be a breath or oral fluid sample unless, for example, the person's physical condition precludes this. And if it is not a breath or oral fluid sample, the police will nominate the medical practitioner or registered nurse to take it.

I understand that despite improvements in the accuracy of breath sample analysis, blood sample analysis remains a more accurate method. In addition, of course, drink-driving offences specifically refer to a blood alcohol concentration, not a breath alcohol concentration. The Greens therefore asked at the briefing whether, if a driver was to independently arrange to provide a blood sample in accordance with the prescribed procedures and within the four-hour window, the blood sample evidence would be admissible in court for the purpose of assisting the court to determine guilt or innocence based on the best available evidence. The answer was yes. However, the Greens have been subsequently advised by independent lawyers with long experience of representing defendants charged with drink-driving of a legal case that may suggest otherwise. The case is Clarke v Smoothy. I have a copy of the case if it needs to be tabled. This case says that for the purposes of the act, there cannot be two samples—a breath sample and a blood sample—and the statutory calculation of the BAC can be made only with reference to a sample taken under the act. The question of admissibility and how to deal with cogent evidence was not determined. On raising this matter with the government, the Greens were advised that a breath sample taken by police will always be lower than a blood sample analysis because the particular evidentiary breath analysers that Western Australia Police uses are of the Dräger variety—members learn all sorts of things in this role—and are approved by the National Association of Testing Authorities. These analysers are recommended and calibrated by the National Measurement Institute established under the National Measurement Act and are considered to be one of the most accurate and reliable of such devices available. Importantly, the National Measurement Institute recommends that the EBAs be calibrated so as to reduce the breath analysis result by four per cent, but Western Australia Police has the EBAs calibrated so as to reduce the result by eight per cent. For these reasons, I imagine that it would be extremely unlikely that a defendant would want a blood sample analysis admitted into court as evidence because it is likely to show a higher BAC than the prosecution is alleging. If for some reason that happened, Clarke v Smoothy is old law, and, if this bill passes, the case will relate to a no longer current version of the act. Even if Clarke v Smoothy still applied, in that case, the blood sample evidence was not obtained in compliance with applicable regulations regarding procedure; the case does not preclude or restrict evidence being admitted in court that tends to show that the breath sample evidence is wrong; and section 70 of the act, which will not be amended by this bill, specifically provides that nothing in section 70, which deals with evidence, shall be construed as precluding or restricting the introduction of any competent evidence whether in addition to, or independent of, any evidence for which provision is made by this section, bearing on the question of whether a person was or was not guilty of an offence against this or any other act. I note that, on the face of it, it appears that the intent behind this clause is certainly a sound one. The Greens are inclined to support it, but it would be good to have the issue about the case of Clarke v Smoothy clarified.

The justification given for the provision in the bill dealing with the threshold for the extraordinary driver's licence application process is that the loss of the right to drive is a good sanction and is supposed to cause inconvenience and that an EDL is supposed to be only a safety net. However, there is a perception by some members of the public and by the government that courts are granting EDLs too easily and that this cannot be corrected by the appeal process because the legislation currently grants courts such wide discretion in deciding EDL cases. As someone who used to act for people who needed extraordinary drivers' licences, I am not sure that that is the case. Usually, the circumstances had to be quite strict before a person was granted any sort of provisional driver's licence. Nevertheless, I accept that that is a perception held by some. This process will apply to all EDL applications. The special EDL application process will be done away with. The special application process was available for the sorts of offences that, if the bill is passed, will, from now on, attract a disqualification notice. The special application process permits EDL applications to be brought within two months, a shorter period than the two-month duration of a disqualification notice, unless it is revoked earlier.

Several clauses in the bill provide for consequential amendments that do away with special applications. In the other place, the member for Girrawheen, in support of this clause, tabled a document that she had obtained from the minister's advisers. It shows the outcome of EDL applications in metropolitan courts between 1 January 2010 and 14 October 2010. The table indicates that 1 480 EDL applications were granted, 354 were refused, 128 were withdrawn, 124 were struck out, and 114 were dismissed; and it was deemed that there was no jurisdiction

for 23, and eight were adjourned indefinitely. There were 2 231 applicants, of whom 1 480 got an EDL and 751 did not. The table does not show, however, the number of people who were eligible to apply for an EDL during this period. This number would enable the calculation of how many disqualified drivers tried to get an EDL and how many did not bother. Services such as Legal Aid WA can provide very good information about the EDL process. It may be that inappropriate applications are being effectively weeded out in the first instance and, thus, never reach court. In some instances I advised people that, based on their circumstances, it was not worth proceeding because they simply did not have a strong enough case. I would be interested to know how many people were eligible to apply for an EDL regardless of the merit of such an application between 1 January 2010 and 14 October 2010. During the Greens' consultation process on this bill, this part of the bill attracted some negative feedback. I note that the Aboriginal Legal Service proposes that the list of threshold circumstances that must be met before a court can go on to consider the merits of the application should be expanded to include situations in which refusal of the application would deprive an Aboriginal person of the means to comply with a pressing cultural obligation. Certainly, the Greens have indicated previously that this is a provision that we think should be included. The Greens are not really satisfied that the government has made the case that the current law is not working or is no good. We would be interested in looking at the clause further.

On the issue of a further disqualification incurred during a good behaviour period, section 104 of the act provides that if a person accumulates 12 or more demerit points, the director general is to provide the person with a notice stating, amongst other things, the period of disqualification from driving that will apply and the day on which that disqualification will commence, unless the person makes a section 104J election. A section 104J election is a process that enables the driver to avoid disqualification in return for a written undertaking that for one year the person will not commit an offence that would result in two or more demerit points or disqualification. This undertaking is colloquially known as a good behaviour bond. Pursuant to section 104K, if the person breaches that undertaking, the director general will give the person a further notice that disqualifies the person from driving for double the period the person would have got if the person had not made the section 104J election. If the nature of the breach of the section 104J election was that a further offence was committed that resulted in disqualification, the act currently provides that the driver first serve the double disqualification period for breaching the section 104J election and then the disqualification period for the further offence. However, because the double disqualification period does not commence until the person has been provided with a notice by the director general, the person gets to keep driving in the meantime; the punishment is not immediate. The bill will change this provision so that the person will first serve the disqualification for the further offence and then the double disqualification period. It will be more immediate. The Greens support this clause.

Clause 11 deals with disqualification notices, and consequential changes also appear in other clauses. This is the main part of the bill and gives the bill its title. It is also the most controversial part of the bill. It has attracted strong negative feedback from, amongst others, the Australian Lawyers Alliance, the Law Society of WA, the Aboriginal Legal Service and the Youth Legal Service. I note that in the other place, the member for Kalgoorlie opposed this aspect of the bill, although it did not go to a division.

The Road Traffic Legislation Amendment (Disqualification by Notice) Bill 2010 introduces a process whereby if a police officer has reason to suspect a person has offended under section 63, which is driving or attempting to drive while under the influence of alcohol, drugs or both to the extent of being incapable of properly controlling the vehicle, or section 64, which is driving with a blood alcohol content of or above .08 per cent, the officer's opinion is to be formed as a result of breath or blood testing and the officer has a discretion to issue a disqualification notice. If a person is suspected of committing an offence under section 67, which is failure to comply with direction by police to provide a sample for analysis, then the officer has the discretion to issue the person with a disqualification notice. As to how that discretion will be exercised, I understand from the briefing that in almost all cases the police would choose to issue a disqualification notice, and that the only likely exception is when the person is already under disqualification, since the bill provides that disqualification via such a notice is to be concurrent with any pre-existing disqualification.

The effect of a disqualification notice—which must be issued within 10 days—is to disqualify the person from holding or obtaining a driver's licence for two months from the date the notice is received, unless the notice is revoked earlier. Clause 12 provides that an extraordinary driver's licence does not permit a person to drive while a disqualification notice is in force.

The police can revoke a disqualification notice if the police discover that the breathalyser was faulty; if a charge has not been laid within 10 days of the notice being given; or if the charge for which the notice was given is discontinued. I note that that requires active steps to be taken by the police—revocation is not automatic upon any of those events occurring. The second way a revocation can occur is via the Commissioner of Police, on direction of the Magistrates Court or Children's Court as appropriate, if the court is satisfied that exceptional

circumstances exist to justify the revocation. The third way is if a court acquits the person of the offence or the charge for which the notice was given is dismissed.

If the person is convicted of an offence and the court makes an order that disqualifies the person from holding or obtaining a driver's licence, the court must take into account the period of disqualification already imposed under the notice. It is not, however, required that the court mathematically backdate the court-imposed disqualification to subtract from the sentence the same number of days that have already been served under the disqualification notice. Interestingly, this is a different approach to that outlined in clause 15 of the bill, which makes a consequential amendment that requires a court imposing a mandatory minimum period of disqualification to reduce it by a period equal to the disqualification period already served under the disqualification notice. My question for the minister is whether this is correct; and, if so, why is there now a difference?

I understand from the briefing that when a person is charged on summons rather than being arrested, their first appearance in court can be up to four months later. Therefore, if a person is issued with a disqualification notice, the disqualification period would normally have ended before the person's guilt has been determined by a court. It is quite timely that this issue is being raised in this place, considering the concerns that have been raised—particularly yesterday—around what happened to the mechanic who was driving the Lamborghini that was seized and the concerns around the hoon laws. I would suggest that the issues that have arisen in that circumstance are quite similar to the concerns being raised by the Greens (WA), which I will talk about further. We are talking about the overturning of the presumption of innocence, and that by the time a person has had the opportunity to have his day in court, if members like, the penalty has already been served, regardless.

Western Australia's criminal justice system—indeed the whole Western system of law—presumes a person to be innocent unless and until found guilty. The strong criticisms that have been made of the proposed disqualification notice process are based on the fact that penalising a person who has not been found guilty turns that presumption on its head. A disqualification notice differs substantially from a bail condition imposed by a court. I note that in the other place the opposition conceded this point, but it came to the conclusion that it was one of those cases in which it felt there were cogent reasons to warrant this measure. I note that the government took a similar view—the end justifies the means—and it was also pointed out that there must be prima facie evidence of guilt in that a person has either failed a breath or blood test, or that the person has failed to comply with a direction to give a sample. I also note that the opposition in the other place was of the view that breathalyser equipment is highly accurate and calibrated to reduce the result by eight per cent. The opposition felt that in the unlikely event that the equipment was found to be faulty, a revocation process is available.

But the Greens support the fundamental protection of human rights, such as innocence until proven guilty, and, for this reason—disappointingly—we cannot support this provision in the bill; however, quite apart from that, and even if the government's argument is accepted in its entirety, my concern is that the clause has the potential to cause injustice. I have two examples of possible scenarios where injustice could result. Firstly, if a vehicle containing a driver and passenger is involved in a crash and the driver flees before the police attend, and the passenger, who is over .08, does not flee, the police could assume that the passenger was the driver and issue that person with a disqualification notice. Secondly, a vehicle containing a driver and multiple passengers may be involved in a crash, and by the time the police arrive everyone is outside the car—which would be very common—and if the driver has a record of driving offences and is facing disqualification or other substantial penalty additional to any period imposed under the disqualification notice, to protect the driver the other occupants of the vehicle could tell the police that one of the others, say a person with few or no prior driving convictions, was the driver. That person could deny that, but the police may be persuaded by the statements of the other passengers. In either scenario, if the passenger is over .08, a disqualification notice may be issued against the wrong person without the opportunity of a day in court. I am not certain that a court could make a revocation order in such a case. The bill requires that there be exceptional circumstances, but neither the bill nor the act define exceptional circumstances, although it is a term used in other Western Australian legislation.

According to my notes, Justice Johnson has said in previous cases that exceptional circumstances means that the problems being experienced are either uncommon or are common problems of an uncommon level or intensity—I wonder if either of the scenarios that I have referred to are uncommon. Further, given that such a revocation application would cover the same ground as a hearing of the charge, would the court be prepared to hear it? Unfortunately, the Greens will have to oppose this provision in the bill.

We support the greater portion of the bill and we would support other parts with some amendment, and oppose others. It would have been ideal for the bill to have been split; however, the information provided to us was that the minister has maintained that nothing will slow down the passage of this bill. I note the support the bill has received from the opposition, particularly in the other place, and I acknowledge that it seems unlikely that a

splitting of the bill will happen or that any amendments we propose will be successful. That puts us in the position of having to choose between supporting the bill or opposing it in its entirety in its current form. That is unfortunate, because, as I say, the Greens support the bulk of this legislation as a lot of it is tying up loose ends and is actually quite sound and has good policy behind it, but there is this big chunk of the bill that, for the Greens, just goes too far, and we are simply too opposed to that provision to be able to reasonably consider the passing of this bill as a whole. As such, the Greens will be staying strong to our belief in the rule of law, including the presumption of innocence. Overall, the Greens will be opposing this bill.

The DEPUTY PRESIDENT (Hon Max Trenorden): Members, the question is—Hon Ken Travers.

HON KEN TRAVERS (North Metropolitan) [11.59 am]: "The question is Hon Ken Travers"; I like that! Thank you, Mr Deputy President.

Hon Simon O'Brien: We've got the answer!

Hon KEN TRAVERS: As the lead speaker for the opposition mentioned, the opposition will be supporting this legislation. I do not think that anyone in our society does not believe that people who drink and then drive on our roads are a danger to our community. We need to do everything in our power to send a strong message that drinking and driving is not an acceptable practice because it puts at risk the lives of not only the people who drink and drive, but also other members of the community. I, for one, find drink-driving to be completely intolerable and unacceptable. I accept that people will make mistakes from time to time, and we have to have a legislative framework that provides for people who make a mistake. However, if people continue to drink and drive, continue to flout the law and do not learn from their mistakes, the penalties need to be ratcheted up and we need to send a clear and strong message to them.

It is interesting to note that Western Australia has probably some of the most lenient laws in the country on the blood alcohol limit at which drink-driving cuts in. In every other state people start to lose their driver's licence at a blood alcohol level of .05, but in Western Australia people can be given demerit points if they register a blood alcohol level of .05, which may result in a person losing his or her licence, and it is not until a blood alcohol level of .08 is registered that a driver's licence can be automatically suspended. The penalty is then graduated up by the amount by which .08 is exceeded.

Hon Alison Xamon mentioned that Western Australia also has some fairly lenient testing practices. I am not going to mention those testing practices to the degree Hon Alison Xamon did because I do not want to let people know about the way in which testing is applied here. But members cannot say that we do not have a very fair system in place. If someone is pulled over and registers a blood alcohol reading over .08 and, after going through the breath-testing system, the reading of over .08 is taken to court, that person was very clearly over .08 and deserves to have his or her licence disqualified. That is one of the key measures of this bill.

The bill also deals with the issue of extraordinary licences, the ability of the commissioner to delegate his powers, and a couple of other changes. I will deal with those issues as I go through my contribution. I do not see any great problems with giving the commissioner the ability to delegate powers. I am not sure whether there are many areas in which the commissioner gets involved. He does get involved in things like the appointment of wardens and the sale or disposal of uncollected seized vehicles; those are areas in which the commissioner has powers under the Road Traffic Act. The ability to delegate those powers makes sense to me. That is something we could support. A number of other areas of that act deal with the director general of transport. There is a power there, so it makes sense to provide that same power to the commissioner.

One of the major issues is the changing of the framework for the detection of drink-drivers and drug-drivers. I will go back to when breath tests were first introduced into the legal system. In fact, if we go back far enough, we find that the test was for a person to get out of the car and walk in a straight line. If a person could not do that, the police officer would try to prosecute based on the visual evidence of that person being incapable of driving a motor vehicle. I think that could still be done today.

Hon Simon O'Brien: Are you suggesting that it would be unfair on taller people because they have further to try to negotiate?

Hon KEN TRAVERS: For those of us who lack coordination! I got my licence on the day I turned 17. I suspect I was a more gangly and uncoordinated person then than I am today. One could have thought that I was a drunk driver, but I assure the minister that as someone who rode motorbikes as my main form of transport for the first 10 years of my driving life, I was very strict about not mixing alcohol and driving. It is fair to say that if I were riding my bike, I did not drink. People thought I was a teetotaller because I would drink only orange juice or lemon squash, but I did not believe in mixing alcohol and driving. I was worried about the other idiots on the road and wanted to make sure that I had my full reactions available to respond to anyone doing anything stupid

on the road. I spent a number of nights drinking orange juice at the Fremantle Hotel. The Minister for Transport would be well aware of that hotel on Cliff Street in Fremantle from our shared heritage of having worked for Customs. I was very glad that I had been drinking orange juice when I rode home one night, because someone pulled out in front of me. It was a wet road and I ended up colliding with the car, but I suspect that I was able to take enough evasive action to prevent me ending up in hospital. I was very glad that I was not just under .08, because I suspect that if I had not been, I may not have reacted as quickly or positively to the circumstances that occurred. I do not know how I would have gone with the walking test in those days! That is the history.

I do not disagree that there is a need to bring a more modern approach to the way in which these things are done. If people have been escaping the testing regime by seeking to have the four-hour rule applied, it is a positive thing to move down this path. The testing equipment that is now used for breath analysis is accurate and can be relied upon. That was not necessarily the case when it was first brought in; challenges were made to its accuracy. We do not now need to worry about those issues. I understand that the number of people who seek to get blood tests done is very limited compared with the total number of people tested. Those areas are ones that we will be supporting.

The bill also deals with powers to arrest. I understand that these provisions will speed up the appearance before a court of a person who has been charged with drink-driving. Again, that is absolutely crucial. I have previously given a speech on this issue in this house. If we are serious about addressing law and order, the first thing we must do is try to prevent people breaking the law in the first instance. That can be done through education campaigns. I hope there will be some education campaigns as part of the introduction of these changes. I know that a lot of money has been going into the coffers from the speed and red-light cameras that were introduced across the state, but I have not seen many anti-drink-driving messages in the community for some time. I hope that we take the passage of this legislation as a way of getting out, and reinforcing, the message that drinking and driving do not mix.

There are plenty of other areas in which people who have broken the law are arrested without a warrant. The idea of doing that, processing those people, setting a date for a first hearing and getting them into the justice system is crucial. The priority should be to try to prevent crime. If, however, we fail to prevent it, the priority should be the quick detection of crime and, once detected, for people to be quickly brought into the justice system so that they can be made aware that what they have done is unacceptable to the community. If a person commits an offence and it then takes six months before he or she is found to have committed the offence and then another six months for that person to get into the court system, it diminishes the impact of the message to that person that what has been done is not acceptable to society. Therefore, anything that will speed up the process is something that I will completely and wholeheartedly support.

The next part of the legislation deals with an issue that could be argued is quite radical. I understand and share some of the concerns that have been expressed about this part of the legislation. The bill provides that a person who has been pulled over by the police and has blown into a breathalyser and been found to be over .08 will be issued with a disqualification notice that will prevent the person from driving for a period of up to two months. When the person is then dealt with by the court, any time that the person may already have served for a disqualification will be discounted from the final penalty that is given to the person.

The concern has been raised that this will remove the presumption of innocence. I have had some angst about whether to support this amendment, because this is certainly one of the most contentious parts of this legislation. I say that because there has been a tendency of late for this government to bring in legislation in other areas in which the presumption of innocence has also been removed. However, I believe that in this area, the removal of the presumption of innocence is justified. I say that, firstly, in light of the comment that I made earlier about detection, and the need to give a very quick and strong message; and, secondly, because the government provided us with strong statistical evidence about the number of people who are pulled over for drink-driving offences. I do not know whether I wrote down these statistics correctly when I was briefed by the government, but in the order of 11 750 people are detected each year for drink-driving offences. The minister may correct me if that figure is not right, but I am pretty sure it is. I find that absolutely extraordinary. It horrifies me. That reinforces the message that we need to do something different to make people realise that it is not acceptable to drink and drive. I find it mind-boggling that nearly 12 000 members of our community still think it is okay to get into a motor vehicle and drive when under the influence of alcohol. That suggests to me that there is still a mentality among some members of our community that that is okay and that it is not a significant offence. It is interesting that only 152 of those people pleaded not guilty at the original hearing, and only 30 of those cases were eventually dismissed. We were not able to drill down into the reasons for those dismissals, but certainly 122 of the 152 people who pleaded not guilty were found guilty.

This is an area in which the government was able to provide us with statistics to demonstrate clearly that a person should be deemed to have committed the offence from the time the person is pulled over and blows .08 on the breathalyser. I cannot think of any other area of law in which we would have that degree of evidence that would allow us to determine that a person has committed an offence. I welcome suggestions from members in this chamber on any other areas of law in which there is such telling evidence and the process is so clear-cut and there are statistics to support the claim that the person has committed an offence. It is because the government was able on this measure to provide us with statistics to support that claim that I am prepared to support it.

Hon Simon O'Brien: Those figures that you have just quoted are only for .08 offences, so it is a very large iceberg indeed.

Hon KEN TRAVERS: For the benefit of members who may not have heard that, the minister indicated that the figures that I quoted are only for .08 offences; so for driving under the influence there must be another set of statistics on top of that—hopefully a bit smaller, but nonetheless of great concern.

As I have said, even though I acknowledge that this is a fairly dramatic step that we are taking as a Parliament, there is a sound statistical basis for sending this message to the community. The bill also provides that if there are exceptional circumstances, people may apply to the court to have the disqualification notice removed. I must add that in other pieces of legislation that have come before this Parliament, we have asked that an exceptional circumstances provision be inserted, because when we go down the path of painting very black and white laws, we need to provide for exceptional circumstances. The most recent occasion on which that occurred was with the mandatory sentencing legislation. There was no disagreement on this side of the house that a person who assaults and causes harm to a police officer should go to jail. We were sympathetic to the argument that we need to send a strong message to these people. I say that even though on that occasion there was no statistical evidence to support the claim by the government that people were not being sent to jail when there was clear evidence that they had caused harm to a police officer. Nonetheless, we did see the need for an exceptional circumstances provision to prevent a manifest injustice from occurring. I am, therefore, pleased that such a provision has been included in this legislation.

I always find it very interesting that if ministers of the crown are pulled over and done for drink-driving—I do not mean any disrespect—they are still able to continue to do their job, because they would have a driver.

Hon Simon O'Brien: That would never apply to a Minister for Transport!

Hon KEN TRAVERS: No! Ministers might suffer some public humiliation from that occurring, but they would not necessarily suffer the economic consequence of losing their employment, because they would have a driver, and that would enable them to continue to do their job. However, that may not be the case for other people who are caught drink-driving. There is always a danger that the punishment that is incurred will be more severe for one person, because of that person's circumstances, than it will be for another person. Therefore, we should be mindful of ensuring that the penalties for an offence are generally of a similar nature for all the people who may commit that offence.

Another provision in the bill about which there has been a lot of debate is extraordinary licences. The argument can be put that we have been too lenient in allowing people who have lost their licence for drink-driving to apply for an extraordinary licence that would allow them to continue to drive in certain circumstances. This goes to the issue that I talked about a moment ago, namely the need to ensure that there is equity in the penalties that people in society may suffer for having committed an offence.

Extraordinary licences, I guess, are one of those measures that have been included in the legislation to provide a balance to ensure, for example, that when a truck driver loses his licence, he does not suffer a substantially greater penalty than a member of Parliament would suffer for committing the same offence. I think there has been a public debate about whether we have been granting extraordinary licences a little too leniently. If I have a criticism of the government on this issue, it is that there does not seem to be any great statistical evidence to justify that claim; it is more an anecdotal view. I give credit to *The West Australian* on this matter for—although I would not necessarily classify it as a scientific study—spending some time in the courts over a number of weeks to monitor the number of people who were applying for extraordinary licences. The information that *The West Australian* provided gave an interesting insight into the way in which extraordinary licences have been issued. Certainly, on the face of what *The West* presented, there seemed to be significant variation and lack of consistency in how extraordinary licences were dealt with. I am not aware of the government doing any statistical work to provide a basis for the changes in this legislation. We have not seen anything that illustrates how the current regime compares with what is predicted in the regime proposed in this bill. If the government had done that work, this is an area in which it could have provided some good statistics. It could certainly have provided the number of people who had applied for an extraordinary licence and drilled down into their

circumstances to find out whether they had received extraordinary licences. The government would have been able to compare the findings with the new provisions requiring people to demonstrate that extreme hardship will apply when the bill is passed. In certain circumstances in which people apply for an extraordinary licence today they already need to demonstrate extreme hardship. I would have thought some good, qualitative analysis of cases the courts have been dealing with over time would be beneficial in developing this legislation.

I have to say that if there is one criticism I think I have made in the past about the way this government deals with most of its law and order legislation, it is that it often introduces legislation that does not have an evidentiary basis; it is based on quotes, anecdotal comments and the whims, wishes and prejudices of the Minister for Police and his own set of views of the world. It has not been tested with a scientific study. I think when the government deals with legislation such as this, cabinet should demand that the Minister for Police provide some resources to his agency to conduct that sort of research before matters are brought to us in the Parliament. If we do not do that, we will spend an awful lot of time debating legislation in this house and, potentially, get the opposite effect of what is intended—that is, to make our society a safer place. Even though we may all come at this subject from different angles, I would not for a second question whether anyone in this house shares a commitment to have a safer society. We may all have a different view on the best way of achieving that, but I, for one, do not believe that a single member of this house does not share the goal of a safer society. The question is: how do we arrive at that point? The best way is to have a strong evidentiary basis to the legislation introduced into this house. Whilst I accept it was not a scientific study by *The West Australian*, to my knowledge that is the only base we will be able to use to determine whether the changes we are about to make will make any difference to the number of people who get extraordinary licences and the circumstances in which they get them. It is disappointing that we will pass this legislation on that basis. Whilst I do not oppose the legislation because I accept the concept that people should lose their licences unless they can demonstrate extreme hardship, I suspect this is one area in which I will not be convinced that there will be a significant difference in the circumstances. I suspect that the vast majority of people who are currently granted extraordinary licences will turn up to court and be able to meet the three tests for extreme hardship, whether it be, I think, economic, study related or medical, concerning the individual or his immediate family. I am of the view that extraordinary licences should not be given out lightly. On that point I concur with the government. But I hope that in 12 months we do not see press releases claiming that this legislation has been of great benefit to the community of Western Australia but we do not have any sound evidence to support the argument. I hope *The West Australian* may think about going back in 12 months and doing another survey to see whether, based on its testing, there has been a dramatic change. If that is not the case, we will need to come back and deal with it.

A final issue deals with people who lose their licences due to demerit points and the order in which they will be dealt with in the courts. The changes are probably more to tidy the legislation up as a result of the other amendments, and I think that is a good measure.

There are, however, two areas which are not in this bill and which I urge the government to give serious consideration to if, as a Parliament, we are serious about dealing with the issue of drink-driving. One is the question of how we deal with recidivist drink-driving offenders—people who have lost their licences, but who drive while disqualified and, worse still, are once again drunk at the wheel. I do not normally name people in this Parliament who fit into that category. But there is one individual I am aware of in the Perth community. Previously as a Parliament we have introduced changes to the law as a result of the actions of that person. That is a character named Mitchell Walsh-McDonald, who was involved in a fatal accident in the suburb of Clarkson in my electorate. Members may remember "Jess's law" that was passed by this Parliament some time ago to deal with the circumstances of that accident. I think there was a general view that justice was not done on that occasion. I had the fortune, in unfortunate circumstances, to meet the parents of young Jess Meehan. It was a very telling time for me, mentally, as a relatively new member of Parliament to go through that circumstance. The former member for Wanneroo, Dianne Guise, dealt with that issue admirably in the way she assisted those parents, who would never have their daughter returned, to make sure we changed the law to ensure that justice would be done in future circumstances. I would have thought anyone in this chamber who had been in those circumstances would never again contemplate drinking and driving or driving without a licence. Late one Sunday evening not so long ago—I would probably prefer to watch more Sunday television than I do—I was watching the television program *The Force Behind the Line*. I saw the police arrest a character for drink-driving and driving without a licence and realised it was the same character, Mitchell Walsh-McDonald. He had committed these offences on a number of occasions. At the end of the television program, they went through his history. It would be great to see whether the Parliamentary Library gets a copy of that program so that people can go away and look at it, read the transcript and remember the history of this character. I would normally not mention people by name but on this occasion I have no qualms in doing so. He had clearly and flagrantly breached the law on numerous occasions. I am happy to be corrected by the minister and for it to be brought to my attention, though not necessarily straight away, if I am wrong. Based on what the television program said,

Mitchell Walsh-McDonald had never suffered a custodial penalty for that offence, even though he continued to drive without a licence despite being caught, driving without a licence again and being caught again. I commend the police because I suspect that they are familiar with this sort of character. I suspect that there are others out there. He never got sent to jail.

There are provisions in section 49 of the act that provide for people to potentially get a custodial sentence. In certain circumstances the penalty is six months and in other circumstances it is 18 months. I always find it interesting when dealing with these issues that we think it would be simple to write legislation to make it clear what we want. When we actually read the legislation, it becomes very complicated if one thing applies and something else does not apply. The end result is that this character has not been given a custodial sentence. When I look at his history and performance, I would be the first person to say that he has had his chances. As I said at the start of my speech, people make mistakes. We all make mistakes in our lives. Some of us are more perfect than others but we all make mistakes. I am the first to acknowledge that I have made mistakes in my life and people close to me have made mistakes in their lives. When people make mistakes and continually and constantly ignore and disregard the laws of this state, we have to send them a message, but we have to be understanding about that message. More importantly, it is not just about breaking the law; it is about breaking the law and putting other people's lives at risk. There is a point at which they need to get a custodial sentence to give them and others the message that their behaviour is simply unacceptable.

Whilst I say that all these measures are good, one of the other measures that we need to put in place in this state is legislation that will address the circumstances. I am not a lawyer. I am probably not the best person to say what mechanisms we should put in place to send that message to the courts that someone who behaves in that sort of way will get a custodial sentence. I want to make it clear that I am not suggesting that there needs to be a mandatory sentencing provision in the legislation. Again, there may be extenuating and extraordinary circumstances. Certainly in the case of this individual, having looked at his history, I cannot see what those circumstances would be. The legislation should be structured in such a way that the courts have a very clear message that this Parliament's intentions are that someone who continually and blatantly disregards the laws of the land should do time in prison.

Hon Ed Dermer: In essence, you are saying that if fines and demerit points cannot bring order to the roads, something else has to.

Hon KEN TRAVERS: Yes. Demerit points, disqualifications and fines are in place. As part of our legal system generally, we often fine people and impose a disqualification, a community service order or some other matter, but if people continue to breach the law, the ultimate penalty that we as a community can impose upon someone is the removal of their liberty. For very serious offences, we often do that straight-up. We do not worry about fines. We say that that is a deterrent and as a punishment, that person needs to go to jail and not pass go.

Hon Ed Dermer: If the disqualification is there and the person just ignores that and keeps driving —

Hon KEN TRAVERS: When we are dealing with issues such as drink-driving, there should be a point at which a person ends up knowing that he or she is going to jail if he or she continually breaks the law. I am not sure that that message is getting out there. I put that on the record today and ask the minister to go away and look at it. The government should look at whether our law is achieving what we hope it would do. I would even suggest that the six and 18-month penalties are not severe enough for someone who consistently and completely disregards the law. I do not agree with the amendment that was moved by the member for Alfred Cove in the other place about banning people from licensed premises. Along with the other measures that are in place for recidivists in this area, there should be some form of counselling or treatment relating to alcoholism, even to the point of making it mandatory that offenders have to get some professional assistance. If a person consistently drives whilst under the influence of alcohol, to my way of thinking that person has a serious health issue by way of an addiction to that drug. I would be quite supportive of a process that allows for some sort of alcohol and drug counselling. We should not just treat it as a criminal issue; we should treat it as a health issue.

Hon Alison Xamon: Of course you'd need to make sure that we had appropriate resourcing in the regions.

Hon KEN TRAVERS: Absolutely. People across the state should have access to that sort of assistance to deal with those health issues. I have no doubt that that is an important part of the process of dealing with people who drink-drive. That is another issue that I would hope would be addressed in any further legislative mechanism. Hon Alison Xamon is right in saying that resources need to be available not just for people who live in the metropolitan area but for people wherever they live in the state to get that assistance to deal with the health problem that they have, which is some form of alcohol dependence. I do not for a moment shy away from the fact that that is an area that needs resources. I urge the government to look at that whole area and how we can do it. I do not agree with just banning people. We could ultimately put a ban on people attending licensed premises.

I would not impose a ban for a first offence. I might do it once a person has clearly indicated that he or she has not learnt a lesson. There is no point in doing that unless we put in place those other measures alongside it. If a person still has an addiction to alcohol, we will not address the problem by simply banning that person from licensed premises. We have seen that in the north of the state. Although the measures put in place to remove alcohol from some communities have had some limited benefit, the people who have serious addictions to alcohol have simply moved to other communities and the same problem has occurred in other communities. Unless we deal with that addiction, we will consistently get that problem.

The other area in which I think there is still a gap within our legislation is the way we deal with demerit points. Unlike the double or nothing proposals, which is dealt with in this legislation, there is still provision for someone who is caught speeding and is likely to lose demerit points to plead not guilty, go to court and string it out in court long enough for points to be reallocated to his or her licence. When that person is finally found guilty of the offence, he or she gets the new points taken off. That person might have lost 10 demerit points. That person could string out the court case to a point at which three demerit points are returned. I see the Leader of the House smiling. I know there have been celebrated cases about people allegedly doing this.

Hon Norman Moore: I don't know anybody who's done it.

Hon KEN TRAVERS: That is good. There are people whom the Leader of the House knows who have allegedly done that. That is another example of us allowing a loophole in the legislation. My view is that if one is found guilty, the penalty should apply from the time a person committed the offence. When that offence triggers the loss of 12 demerit points, people can either take the double or nothing option of a good behaviour penalty or lose their licence for three months. The reality of that is that the people who use that loophole tend to be more knowledgeable about the legal processes. Average punters out there in the community will just pay the fine, get the penalty and lose their licence for three months. That, in my view, is still a consistent and gaping flaw within the legislation that we are dealing with today.

To summarise, as I said, a number of measures in this legislation are useful and beneficial and will send the right messages to our community. Although I am prepared to support this legislation, yet again I am disappointed that elements of this legislation—which I suspect have been drafted by the Minister for Police—have not been developed on the basis of good, sound evidentiary research. The legislation is more about trying to meet slogans and prejudices within our community. I gave a speech the other day about that. If we continue to deal with law and order legislation in that way, in my view we will not reach the goal that I have said we all share; that is, the goal of making our society a safer place. I urge the government when it brings in legislation like this in future to ensure that there is a good, sound legislative basis for it. I have suggested that on this occasion there was some good evidence provided by the government for one measure in the bill, but there was no evidence for a number of measures. Because the opposition agrees with the general intent of the legislation, we will not oppose the legislation.

The other concern I have, as the opposition has had with a range of legislation that we have dealt with in the past in this area, is the constant concern that the measures that are intended to be achieved with this bill will not be achieved, and that we will be back in this place dealing with amendments to this amendment bill because that work was not done but was just driven by the Minister for Police.

I think I have covered all the issues I wanted to cover. I again urge the government to seriously look at those last two areas I mentioned to see whether it can address them in future legislation because they are two glaring errors. I genuinely believe that we share the common goal of addressing these issues, making our society safer and getting the message through to the courts that recidivists must be given the penalty of the custodial sentence that is contained in the legislation. Secondly, the loophole that exists with regard to demerit points is an area that we could tighten up, which would make for better legislation.

With those comments, I intend to support the legislation.

HON SIMON O'BRIEN (South Metropolitan — Minister for Transport) [12.42 pm] — in reply: I thank members who have contributed to the debate. I note with satisfaction that the indication of the house as a whole is that it will support the second reading. That will then enable us to consider in detail, as we go through the bill clause by clause in the Committee of the Whole House, some of the issues that have been raised by one or two members that do require, and will be best served by, a two-way dialogue. However, I wish to canvass by way of response the matters that members have been thoughtful enough to raise in the second reading debate. I do not intend to do it as a shopping list of members as sometimes happens—such as so and so said this and so and so said that—because a number of themes arose.

Hon Ken Travers: He said, she said, and then we find them guilty!

Hon SIMON O'BRIEN: Something like that!

Some themes were raised several times and what I intend to do, therefore, is address each of those themes thereby covering the matters that were raised. In doing that, I will take the opportunity of providing a response, as this speech is meant to be, to refocus the house's attention on what this bill is actually about and on the fundamental underlying policy questions. There are only a couple of them and I think they are pretty straightforward. It is important that we reflect the standards of the community and that we respect sensible provisions, rather than persevere with some provisions that could work better, are outdated or in one or two cases have been allowed to come into disrepute. I am therefore hoping that the house will find that an easier and simpler exercise, rather than a complex and technical one. I will raise a couple of points in response as I approach the summary that I have just alluded to. Hon Kate Doust opened the batting for the opposition. I thank her for her comments.

Hon Kate Doust: Brief as they were.

Hon SIMON O'BRIEN: Brief as they were, but they were insightful. She raised a number of questions that I would like to address. She spoke about matters relating to breath and blood sampling. That gives me an opportunity to clarify a few things, which is important to do at this stage. The changes that are proposed in this bill are about closing a loophole that has, unfortunately, been exploited by some persons. Like Hon Ken Travers, I do not want to particularly advertise those things too far and wide.

Hon Ken Travers: I didn't go into the detail

Hon SIMON O'BRIEN: Indeed he did not. I fear that I must venture into that territory a little and will probably do so a lot when we debate relevant clauses of the bill. I guess we are all adults, Mr Deputy President (Hon Matt Benson-Lidholm), but if I have to ask you to clear the packed public gallery, I am sure you will comply.

Hon Ken Travers: I think he's already done it!

Hon SIMON O'BRIEN: That might have been a previous speaker!

Currently, section 66 of the Road Traffic Act empowers a member of the police force to require a person to give a breath sample. That same section also empowers the person upon whom the requirement is imposed to elect instead to provide a blood sample. That is a situation that goes right back, I believe, to 1965 when breath testing first appeared on the scene.

Hon Kate Doust: Most of us were learning how to ride our pushbikes and not worrying about that!

Hon SIMON O'BRIEN: I am sure Hon Kate Doust was of very tender years!

The fact is that it is a long time ago. Historically, the purpose for this option to elect was provided as a comfort and a protection to a person who might be required to provide a breath test. The reason for that, I understand, is quite simply that breath testing and breath analysis for alcohol content were nowhere near as sophisticated or as advanced in a technological sense as they are currently; therefore, the ability to give a blood sample was deemed to be giving a fair go.

It remains the case that the analysis of a blood sample will produce the most accurate result of a person's blood alcohol content, but there are some reasons why it is considered appropriate to remove the ability of a person to elect to provide a blood sample in lieu of a breath sample. I will touch on this issue again a little later when we talk about the presumption of innocence issue, which has already been raised. Firstly, technology has advanced significantly, and although not as accurate as a blood analysis, the equipment for breath analysis available to the police now is highly regarded for its level of accuracy.

Hon Ed Dermer: Where do people stand if for some reason they are physically incapable of giving a sufficiently strong breath?

Hon SIMON O'BRIEN: I will tell Hon Ed Dermer exactly where they stand in just a moment.

The second reason we are proposing a change is that the breath-analysing equipment that is currently in use is calibrated so that it provides a tolerance in favour of the person whose breath sample is being assessed—a margin for error, as it were, in the same way that Multanovas are generally set.

Hon Ken Travers: You might apply a statistical error.

Hon SIMON O'BRIEN: Yes. I understand that the National Measurement Institute recommends that the equipment be calibrated so as to give a particular percentage reduction in the reading. In Western Australia the equipment has been calibrated so as to give double the recommended percentage reduction. All of this militates

in favour of the person providing the sample. From that point of view, as representatives of those people, I do not think we need to fear it.

Hon Ken Travers: The bottom line is that if you blow over the limit, you're definitely over the limit.

Hon SIMON O'BRIEN: That is a good way of summarising it and expressing it in plain English.

It is the government's view that those reasons alone obviate the need to retain the ability of a person who is capable of providing a breath sample to be permitted to elect to provide a blood sample instead. However, there is a third consideration, and it relates to the ability of the person to nominate the medical practitioner or nurse who is to take the sample. That has been known to result in some persons managing to avoid having a sample taken within the time frame required by the act, thereby avoiding the detection of a drink-driving offence. Some people who are in the know, so to speak, have been misusing and abusing what should be a legitimate defence that dates back many, many years. If people want to exercise their prerogative to have a blood sample taken rather than to breathe into the machine, and they also elect to nominate the person who will take the blood sample, it is awfully easy at midnight for them to nominate the family doctor, who will not be available until 10.00 am the next morning, which is well over the four-hour limit provided for in the act; thereby justice can be seen to be frustrated. That provision needs to be changed, and it is fair that it be changed.

Hon Ed Dermer raised the important question of what happens to someone who is physically incapable, because of a shortness of breath, perhaps through asthma or possibly even through a physical injury, of providing a suitable breath sample. The bill before us contemplates that and retains the provision for a blood sample to still be an avenue of recourse, as it needs to be. However, it will be the police officer who will nominate the person who will take the sample to get past the unforeseen problem that I have just mentioned. It is necessary to do that. Even then, we are still not out of the woods. If a copper serving on a booze bus in the middle of the night detects someone and takes the person to a busy Royal Perth Hospital emergency department, I wonder how much priority his case for having a blood sample taken would get from the medical staff on duty. My understanding is that the police will have suitably qualified staff available at booze buses to perform these procedures.

[Quorum formed.]

Hon SIMON O'BRIEN: I will not summarise my comments to this point for the benefit of any members who have been on urgent parliamentary business!

Hon Ed Dermer: If I understand you correctly, if a person explains to a police officer that he is physically unable to blow sufficiently strongly to satisfy the test, can he choose to have a blood test as an alternative?

Hon SIMON O'BRIEN: No. The breath test will be the standard in all circumstances. When a breath test is not possible, for whatever reason, and that is the assessment of the officer, or just the reality that the officer is confronted with in a particular situation, the option of a blood analysis can be considered.

Hon Ed Dermer: But if someone said that he was incapable —

Hon SIMON O'BRIEN: With respect, we are now getting into an issue that might best be reserved for the committee stage.

Hon Ed Dermer: I think we are almost there, minister.

Hon SIMON O'BRIEN: We are going to arrive there at the appropriate time.

The DEPUTY PRESIDENT (Hon Matt Benson-Lidholm): There are only five minutes remaining, so it is probably a good point that we raise those issues during the committee stage.

Hon SIMON O'BRIEN: I think that is right, because we need to make progress.

Hon Kate Doust also asked a question about the amendments to the extraordinary driver's licence provisions and whether they were based on Victorian legislation. It is actually the proposed amendments to the disqualification notice provisions that are modelled on the Victorian legislation. There was also a query about whether similar provisions exist in other jurisdictions. Indeed they do. Similar provisions apply in Tasmania, South Australia, Victoria and New Zealand. The extraordinary driver's licence provisions were conceived locally, and we will discuss those in detail in a moment.

Hon Alison Xamon raised a number of issues, and some of these will have to be followed up in detail in the Committee of the Whole. However, I will canvass some of the matters that she raised. The honourable member has an issue with the proposed arrest powers contemplated in the bill. There are some serious practical reasons that those provisions have been proposed, and they are about the central policy position of the bill. The central policy position of the bill is about making sure that the law intercedes, and intercedes immediately, when people are found to have committed an offence that disqualifies them from being behind the wheel of a car and, indeed,

not only are discovered in such circumstances, but also have the capacity to commit a further offence by getting back behind the wheel of a car—for example, if they were over .08. Justice needs to be delivered.

Point of Order

Hon ALISON XAMON: The minister's microphone cut out and I am really keen to hear his response. It seems that I am having the same problem that everyone else has when I speak! I cannot hear properly. The microphone had been working and then it stopped, although I note that its light is on.

The DEPUTY PRESIDENT (Hon Matt Benson-Lidholm): I can only inquire how much the member missed.

Hon SIMON O'BRIEN: I do not have a rewind button!

The DEPUTY PRESIDENT: The minister is pretty good on his feet.

Hon SIMON O'BRIEN: I will attempt to project as much as possible.

Debate Resumed

Hon SIMON O'BRIEN: The arrest power is directly linked to the other broader policy of the bill—that is, to ensure that a sanction in the form of a disqualification takes place promptly when an offence is found to be committed, and that it is certainly a decisive intervention if there is the risk of a further serious offence being committed if an arrest power is not exercised. The power of arrest also has the advantage of ensuring that people are charged promptly. The court process is required to be dealt with promptly, so that the period before people appear before a court is not longer than their suspension period.

Sitting suspended from 1.00 to 2.00 pm

Hon SIMON O'BRIEN: I know it is the will of the house that we make progress on the Road Traffic Legislation Amendment (Disqualification by Notice) Bill, so I will draw my second reading reply remarks to a close shortly. I just want to remind the house, though, what it is that we are really dealing with in this bill. I think it really boils down to two key areas of policy that relate to the disqualification of drivers and the processing of applications by courts for extraordinary licences for when a licence has been suspended. It is not per se about disqualification notices, which is a mechanism entertained by this bill.

The whole subject, firstly, is about the disqualification of drivers and the basic concept that when people are found to have committed an offence in a way that the law prescribes they should be sanctioned by having their licence suspended or be disqualified from having a licence, it should happen forthwith. It is silly, as other members have commented, it offends a sense of right, it offends a sense of justice and it appeals to a sense only of the absurd when people are caught in circumstances in which they should have their licence suspended and that suspension does not happen until months and months later. That is the sort of thing that can happen. It offends, I think, most thinking people, indeed, anyone's sense of sensibility and justice that if people are found out in the commission of an offence, perhaps because of the condition that they find themselves in when driving a car—I am referring to driving drunk—that requires their driver's licence be suspended that we do not suspend their licence forthwith. Indeed, we allow them to keep driving and to potentially commit further offences of the same nature.

It seems silly I think to any right-thinking individual—I am sure to members on both sides of the house—that if a court is contemplating a matter that is to resolve itself in a court-ordered disqualification from driving that that person can then walk quite legitimately from that court, hop behind the wheel of his car, drive off and keep driving for a while until some other process causes him to surrender his licence or a bureaucratic process formally announces that his licence is now suspended. That is silly. If anybody appears before a court to be told that his licence is hereby suspended by that court, it should mean that his driver's licence is suspended forthwith. That will apply in future if the house passes this bill and it successfully completes all stages. The current law is deficient in that that does not apply in practice at present in all circumstances.

Similarly, with extraordinary licences the basic principle promoted in this bill is that we recognise that it is a privilege to have a driver's licence, not a right, and a privilege that carries with it some responsibilities. As such certain hurdles must be jumped and preconditions must be met, even more so in cases whereby people have their licence suspended as a lawful sanction for some misbehaviour as a driver. It should be an extraordinary situation that enables the court to order the overriding of that licence suspension. At the moment, many circumstances have been highlighted in which extraordinary licences were given out in circumstances that, frankly, are less than extraordinary. The government is not impressed with the way in which some extraordinary licences have been accessed by some individuals and that displeasure reflects the displeasure of the wider part of the community that we all represent. We will get into that in some detail in a moment, I hope.

For now the simple problem that we have with the granting of extraordinary licences is that the courts have a range of matters to weigh up before arriving at their decision to grant or refuse an application for an extraordinary licence. Different courts can weigh those matters up differently, as we would expect; they will apply a different weighting in one court with one judicial officer in one area from perhaps another judicial officer sitting in another place. That leads to inconsistencies that in some cases when brought to the public's attention are so glaring that they actually have a tendency to bring the law into disrepute. Therefore, the government resolved that it is in the interests of our community and respect for the law that it is necessary that the law be amended via this bill to give the courts a clearer direction about what this Parliament wants when the courts deal with extraordinary driver's licence applications.

The device that we have come up with is quite simple. These things need to be fairly simple so that they can be clearly understood by the public. At the moment, one of the matters that can be given substantial weight is spoken of as the level of hardship or inconvenience that might be suffered by an applicant if he or she were to be unsuccessful in his or her application. At face value I do not see a lot wrong with that. I have faith that the courts can weigh up these things and make value judgements, as they must do all the time in making decisions about what "reasonable" means and, in this case, what levels of "inconvenience" might mean to an individual; however, the law appears to be flawed in just that—that word "inconvenience". In looking at many of the decisions made by some courts, it appears that the criteria of inconvenience is given rather more weight than it perhaps should when measured against the contemporary values of our community. The simple point that drives this particular policy article on this particular bill is that we want to make it clear that inconvenience is the whole point; that if someone transgresses against the law to the extent that his licence is taken off him for a period, part of the purpose of that is to cause inconvenience. Hopefully such people will wake up to the fact that the offending behaviour they have exhibited, which has caused them to have their licences suspended, is not the way to go, and that they should repair their behaviour in future. Suspension of a licence is in part intended to be inconvenient; it is a form of punishment for a transgressor. It is deliberately intended to be inconvenient. It is therefore open to perhaps unintended consequences if we use that term in the way that it has been applied in this particular law, and that is why we seek to remove it.

However, there are occasions when any reasonable society would have the view that extraordinary circumstances could exist making it desirable for someone to have access to a driver's licence, perhaps conditionally, even though subject to a broader suspension. We would like to see that value exhibited in our laws and by our courts. Therefore, the government has also taken the view that there should be capacity for the granting of extraordinary licences. I might add that some in our community take the view that no extraordinary licences should be granted; that it should not happen at all. However, it is this government's and, I hope, ultimately the Parliament's view that some circumstances merit the granting of an extraordinary licence; they are recognised adequately in the definition of extreme hardship—a measure that has to be satisfied in future before a court is able to give out an extraordinary licence. That is if the Parliament agrees to this law. No doubt we will discuss that a little more in the future. Members therefore need to understand that those are the two key policy principles we are talking about this afternoon. I do not think it is the overwhelming view of this house that the policy views I have just identified need not be adopted. I think they are recognised as desirable. Indeed, they are already contained in the statutes of Western Australia. We are amending the way in which people are disqualified—in this case, the timing of the disqualification applying—and we are amending the circumstances in which a court can consider an extraordinary licence. None of these concepts are new, but they are being altered slightly to take on board the benefit of real world experience. I hope that we will talk about the detail of that a little more when we are in the committee stage.

However, before we do that, I want to acknowledge the concerns of Hon Alison Xamon, for one, and other members as well, about the presumption of innocence. I think the concern expressed by Hon Alison Xamon and Hon Ken Travers was specifically about an on-the-spot disqualification notice effectively meaning that the question of one's offence is deemed to have been proven and the penalty or sanction, in this case disqualification and all the inconvenience that goes with it, shall apply right now—forthwith, without delay.

Firstly, that is part of what we are trying to achieve here today, for all the good reasons that I have just enumerated; that is, if an offence has been committed and a sanction needs to be applied, it needs to start as soon as possible so that it is related to the offending behaviour. We also want to get away from the absurdity of it taking perhaps six months to get to a court before a three-month suspension can ultimately be exercised. That is, nine or 10 months later the person is serving a three-month suspension for something that happened last year. That is the sort of thing that we have to deal with. We have to weigh the members' concerns against those other realities.

I think Hon Ken Travers described it quite fairly when he said that long experience has taught us that when people are picked up and breath tested over .08, it is a pretty reliable indicator of guilt. He quoted some figures

from 2009 that I will repeat: 11 558 people were charged with an excess .08 offence. Of those, 152 people pleaded not guilty. A very tiny fraction contested the charge and of those, 30 had their charges dismissed—only 30 out of 11 558. They are the figures available to me. Of those 30 charges, I do not know in how many circumstances the offender might have been found not guilty as opposed to any instances in which the court dismissed the charge for some procedural irregularity. Either way, that is an infinitesimal slice of the whole. As Hon Ken Travers pointed out, for a lot of offences it is rare to have this sort of data and information so that we can make that sort of value judgement.

However, being stopped, required to provide a breath test and returning a positive breath test analysis is a pretty absolute situation. All of the evidence tells us—we discussed this earlier—that the reading given will be accurate and certainly fair to the person being tested. I spoke about the tolerances being factored into the calibration of the equipment. I spoke earlier about a matter Hon Kate Doust raised last night about the improvements in technology since the introduction of breath testing equipment. The fact of the matter is that when a person is, in colloquial parlance, "done" at the roadside for .08, inevitably the courts will uphold that finding and almost inevitably that is the outcome. That is perhaps quite different from some other offences that we might consider. If someone, at two o'clock in the morning, is climbing out a window and down a ladder at a place other than that person's normal residence, is wearing a black beagle boys' mask and is carrying a bag over his shoulder on which the word "swag" is written, that might draw the attention of any of the local constabulary who might just happen to be passing by and observe it.

Hon Alison Xamon: Do you think?

Hon SIMON O'BRIEN: I rather think that it would. However, that would not be proof that the person has done anything more than exhibit a behaviour that might draw attention and merit some further questioning or inquiry by a law officer. It could not be said, and no court would have it said, that just the fact of those circumstances presenting—this person leaving the scene of an assault or anything else—could in any way be seen as committing the offence of burglary. No, a whole lot more evidence would have to be obtained and proved in a court before there would be a conviction and then some sanction imposed. However, we are in a position, based on several decades of experience, to conclude that when someone is examined for drink-driving, and all the tests that are conducted on site produce a certain result, that person has indeed committed an offence. It is still available to them to have a court review that matter, and so it should be. But when one weighs the various merits of a presumption that an offence has been committed versus —

Hon Kate Doust: I think we are getting what you are saying.

Hon SIMON O'BRIEN: If one weighs, on the one hand, the question of whether an offence has been committed versus the other public interest, which has been clearly identified in this bill and by other speakers, that when a suspension or a disqualification is to be served, it needs to be served forthwith, we have to make the value judgement of whether the provision that is proposed is required. It is the value judgement of this government that it is required and that it does pass the tests I have just outlined. The government hopes that the Parliament will also take the view that this is the appropriate course of action. We can talk about some other things in the course of the committee stage, which I hope we will now proceed to. Some members have spoken about Clarke v Smoothy and other matters, which, if they wish, are more appropriately taken during debate on the relevant clauses.

I conclude by indicating that a couple of basic concepts are at stake in this bill, and we, as a Parliament, need to recognise them and to note that the current laws that we propose to amend should be amended. That is what this debate is all about. I commend the second reading to the house.

Question put and a division taken with the following result —

Ayes (25)

Hon Liz Behjat	Hon Phil Edman	Hon Robyn McSweeney	Hon Sally Talbot
Hon Matt Benson-Lidholm	Hon Brian Ellis	Hon Michael Mischin	Hon Ken Travers
Hon Jim Chown	Hon Jon Ford	Hon Norman Moore	Hon Max Trenorden
Hon Mia Davies	Hon Philip Gardiner	Hon Helen Morton	Hon Nigel Hallett *(Teller)*
Hon Ed Dermer	Hon Nick Goiran	Hon Simon O'Brien	
Hon Kate Doust	Hon Alyssa Hayden	Hon Ljiljanna Ravlich	
Hon Wendy Duncan	Hon Col Holt	Hon Linda Savage	

Noes (3)

Hon Lynn MacLaren	Hon Alison Xamon	Hon Robin Chapple *(Teller)*

Pair

Hon Ken Baston	Hon Giz Watson

Question thus passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Hon Jon Ford) in the chair; Hon Simon O'Brien (Minister for Transport) in charge of the bill.

Clause 1: Short title —

Hon ALISON XAMON: As I indicated during the second reading debate, it was with quite a bit of difficulty that the Greens (WA) decided to oppose this legislation. As we go through it clause by clause, it will become clear that there are a number of provisions in this bill —

The DEPUTY CHAIRMAN: Order! There were some complaints yesterday that members could not hear Hon Alison Xamon, yet members are continuing to have conversations around the chamber. It is particularly difficult to hear the member when other members are talking. Hon Alison Xamon has the call. Let her talk in peace.

Hon ALISON XAMON: Thank you, Mr Deputy Chairman. As we go through the clauses it will become clear that a number of provisions are actually quite good and, I would argue, quite important, but others could be improved by amendment. Unfortunately, as we will discuss when we get to the relevant provision, there is a difference of opinion about weighing up, as the minister articulated well, the value of the presumption of innocence and the policy intent of the bill. When the Greens made the difficult decision to oppose the legislation in total, we were working on the assumption that the minister would not entertain any amendments to the bill. Can the minister confirm that?

Hon SIMON O'BRIEN: All I can say in response is that the government is not proposing any amendments. I am not aware of a supplementary notice paper, so I do not believe anyone else has proposed any amendments for us to consider either. It is our view that the bill is constructed as it should be. Unless anyone chooses to place an amendment before the house, the question of whether we will accept it will not arise.

Hon MAX TRENORDEN: My major concern with the bill can be remedied without amendment. The bottom line for me is that under the current legislation, someone from Leonora or anywhere in the middle of regional Western Australia who is silly enough to drink and drive is allowed to sober up and drive home, which might be a 1 000 kilometre trip. Under the proposed legislation, a person will not be able to do that. The person will be stranded wherever he is caught. That is not quite true; the person will be transported to the nearest police station. Can the minister tell me whether the person's vehicle will be driven to the nearest police station too? The person will automatically be stranded there without a licence. I understand that the police will have the option to not charge a person until the next day, which would allow the person to drive home. If that is the case, I will support the bill, but I will oppose it if people in the regions will be unable to get home. That is a standard impost on them. When I was in the chair earlier, I heard Hon Ken Travers say that people make mistakes. If a woman goes to a local tennis club and has one or two glasses of wine, she will be over the limit, whereas a man can probably have six drinks.

Hon Ken Travers: Not if it is a standard drink.

Hon MAX TRENORDEN: An experienced drinker like Hon Ken Travers might be able to drink a keg! Nevertheless, the point I am making is that there is a physical difference between the volume of alcohol a woman and a man can drink to reach .05. That is particularly the case for a man like me, who has a bit of

condition on him and who can probably drink a little more. A woman can be over the limit if she has just one or two drinks at the local tennis club. That is the law and I am happy for that to be the default position; that is not the issue. The issue is how she gets home to her children.

Hon Ken Travers: I am listening to what you are saying because it is important that there be equity across the community. I do not think that people should be treated differently because of where they live or what their profession is. I am listening to the member's point.

Hon MAX TRENORDEN: On my reading, the bill says that the two-month period begins at the time of the infringement. My understanding is that under certain circumstances people will be allowed to sober up, which they are allowed to do under the current legislation. That is an important argument, and there is a problem with the definition there, but a person should be allowed to get home, whether it is a 100-kilometre trip or a 1 000-kilometre trip. If they are unable to do that, it will not be a little imposition, but a serious imposition, on some people. I do not want to argue against jumping on people who drink and drive. That is not the point I am making. My point is that people will be penalised who deserve to be penalised, but they will be penalised differently from most other Western Australians. It is a question of equity.

The nature of the community—it is terrible that I can say this—is that some people in small country towns will drink and drive anyway. They are doing that now. I read recently that about 30 per cent of people drive in a condition in which they should not be driving. It is very hard for the police to ascertain whether to apply an infringement. However, that is not the point I am making. There is a further penalty for a person who is foolish enough to drink and drive because the penalty penalises not only the person who drinks and drives, but also the employer, because on the following Monday the mechanic, the ambulance driver or the schoolteacher will not turn up to work. That is something that has to be taken into consideration. The other point is if the person is stupid enough—plenty are, apparently—to drive and, say, another person is unlucky enough to run into that driver, or that driver runs into the other driver, it is not only that person who gets penalised with no insurance, and no third party insurance and so forth, the driver who is not at fault also gets penalised because he or she has to deal with the person who has no insurance or third party insurance. The penalty is not only —

Hon Nick Goiran: Is the member talking about third party motor vehicle insurance?

Hon MAX TRENORDEN: That is right.

Hon Jim Chown: Your own insurance company will cover that.

Hon MAX TRENORDEN: Yes, but what if a person driving a Mercedes-Benz drives into someone who is not insured?

Hon Jim Chown: That is why you insure it.

Hon MAX TRENORDEN: That person has no insurance. If the other person is not insured, try to get the money out of that person! I spent half a lifetime in the insurance industry. Try to get the money out of someone who is not insured—through the courts a person will end up getting $1 a week for the next 2 000 years!

Hon Jim Chown: That is the responsibility of your insurance company; it is not your responsibility. You've got your own vehicle insured.

Hon MAX TRENORDEN: A raft of unintended consequences can arise out of this. That is the point I make. I do not want to defend people who drink and drive; that is not my issue. My issue is that we need to have some equity. Over the next three minutes I do not think the minister can appease my concerns. On my reading of the bill the police can decide that a driver will be infringed tomorrow; therefore once that person sobers up and is within the rules, he or she can drive home but will be infringed tomorrow. From that time, that person is disqualified for two months. I support the bill, but if this bill will result in a person left thousands of kilometres from home—that is a bit exaggerated, but a person could be 500 kilometres to 1 000 kilometres from home with no capacity to get home—how does that person get home? That is a question for the regions. If that is a male, maybe that is tough, but if it is a female who has young children and those sorts of questions, it becomes a serious issue. I want to support this bill, but if that issue cannot be dealt with I am not supporting the bill.

Hon ALISON XAMON: I hear the concerns being raised by Hon Max Trenorden. The Greens' concerns are slightly different from that, though Hon Max Trenorden has certainly articulated the complexities that can arise from this sort of approach.

Hon Ken Travers: If the Greens' concerns are different concerns, would the honourable member mind if the minister responded to Hon Max Trenorden's concerns first?

Hon ALISON XAMON: I am certainly happy for the minister to respond to Hon Max Trenorden. The question was put and the minister did not stand; and that is the only reason I stood. Otherwise, I am more than happy to sit

down so that the minister can respond. I am happy to elaborate on what the Greens' concerns are. Mr Chair, on that basis I will sit down, but I would like to be able to continue so I can raise our concerns.

The DEPUTY CHAIRMAN (Hon Jon Ford): Hon Alison Xamon was right; I did put the question.

Hon Ken Travers: I thought the minister was still receiving advice from his advisers.

Hon Simon O'Brien: I will respond.

The DEPUTY CHAIRMAN: The minister has now indicated to me that he will respond.

Hon SIMON O'BRIEN: Hon Max Trenorden raises some interesting issues that go to the very nub of the policy of the bill before us. Let me reiterate what that policy is. It is a recognition that it is highly undesirable that if someone commits an offence—the typical one we are talking about is exceeding .08, and will therefore have his or her licence disqualified—the licence disqualification should commence at some remote time down the track away from the committing of the offence. The changes contemplated by this bill are that the disqualification period should take place forthwith. That is the administrative machinery that the member is now contemplating whether to support.

May I point out, as the member knows very well, that there is a real world out there. That is in effect the point the honourable member raised. He is reminding us that there is a real practical world out there, and he asks how this will work in practice. During the course of the second reading debate a number of us noted that there were bits of the existing law that perhaps were not working as well in practice as they should, and therefore we have amendments before us at this present time. As it stands, a police officer at some regional or outlying area who detects someone driving a vehicle over .08 is confronted with exactly the same question as he or she does now, or is proposed in the future; that is, "I've got someone who is on their own; they're driving a car; I've just breathalysed them and they've blown over .08. We're out in the middle of nowhere or in some fairly remote locality in the middle of the night—what do I do? I cannot let them get back behind the wheel of the car. I cannot take their keys and leave them on their own out here." The same questions arise now. This bill does not fix that. We will still rely on that officer, in a remote location, to use commonsense and a practical application of the law based on his or her experience and plain old policeman's knowledge of people as to how he or she deals with that situation, just like we do now. No two situations are alike. The police will have arrangements, some written and some unwritten, for the protocols of how they deal with those situations.

Let me make it quite clear what is contemplated by this bill before us. If I have to risk alienating Hon Max Trenorden's support for the bill because of it, then so be it, but I will be honest about what is here. Clearly what is indicated here is a regime whereby there is an arrest. A resulting charge and disqualification notice are all presented or laid upon the alleged offender simultaneously. We are all set to go to court and everything; the disqualification has taken place and so on. That is a bit different from what happens now. That is what is proposed will happen in future. Plus, we need to understand practical questions such as, even if a person is arrested and taken to the station, what happens to his car? Is it going to be secure here? Is someone going to pinch it? If the person is processed back at the station, will he go back, still drunk, to pick up his car a couple of hours later? These are the sorts of situations that happen already, so I do not propose to try to provide all the answers right here. I am not going to say, in advocating for a disqualification notice so that disqualifications can happen immediately, that there will be situations in which it does not really apply; I am not going to say that at all, because it would be improper for me to do so. Under clause 11, I note that in proposed section 71C(6), and in other places, there is contemplation of a disqualification notice being provided or served upon a person up to 10 days after the arising of circumstances that entitle an officer to serve such a notice. One might ask why we have that provision. It is to anticipate a range of circumstances that, in practical, real-world time, may apply. For example, after an officer has decided to issue a disqualification notice or arrest the person, it may be that some emergency arises and the officer is called away—a house is on fire or someone is being murdered; whatever it is—so the decision has to be made. The officer will say, "Right; we're going to leave this situation, go away and attend to something else", and he may well revisit the traffic situation a couple of hours or a few days later. That is the reason for that provision. I am sure that that could be applied to other situations; whether it would or should apply to the specific situation described by Hon Max Trenorden is not something that I, as minister at the table, am prepared to entertain. I say to the member that it is not the intention of the legislation to have that exemption. Sometimes people have to be practical about what happens in the real world, but I am certainly not saying that that will happen. I will go so far as to say that it should not happen, in the same way that it should not happen now, but the honourable member, in common with most of us, understands that there is a real world out there. The specific answer to the question is no. What is contemplated in the provision is that a disqualification notice should be given on the spot when a suspension of licence is warranted, and this is the legislative machinery to give effect to that situation.

Hon KEN TRAVERS: I want to congratulate Hon Max Trenorden for raising this issue; it is an issue that I had not contemplated in my consideration of the legislation. I must say that it is not surprising to quickly find problems with legislation coming from the Minister for Police. Hon Max Trenorden was not making a point just about a situation in which someone is found to be drink-driving in a remote location. The person could be from a remote Aboriginal community and be pulled over for drink-driving in Kalgoorlie. How does the person then get home if he has been immediately issued with a disqualification notice? If that were to occur, it would place an extreme hardship on someone and would be very different from being picked up for the same reason in the city. If I were to be picked up in Joondalup and needed to get home, it would simply be a matter of calling a taxi, which might cost me between $50 and $70, and finding someone to pick up my car the next day. The penalty for me would be perhaps a couple of hundred dollars for taxis over and above the fine penalty. For someone who has been disqualified in the circumstances outlined by Hon Max Trenorden, the penalty would be significantly harsher. The person would not have any way of getting home. I also note the comments he made about the potential flow-on effects to others in the community who will suffer because they will not have time to reorganise their affairs.

That is not to remove the fact that I agree with the general principle of the bill—that we need to get the message out there very quickly. I ask the minister to contemplate this issue. Although the Road Traffic Act jumps across portfolios, these matters are more for the Minister for Police than for the Minister for Transport; the Minister for Transport is dealing with these matters as a representative minister, so I understand the difficulties involved in making a decision here and now. However, it strikes me that it would be easy to resolve the issues raised by Hon Max Trenorden by coming up with some sort of mechanism that could be put in place, while still complying with the policy positions that we agreed to during the second reading debate and meeting the requirements of the legislation. Currently, after two weeks, someone can apply to a court for consideration of extreme hardship, and I wonder whether a provision could not be inserted to provide that, if the person could demonstrate to the arresting officer or to a senior officer that he would suffer extreme hardship, there could be a delay of up to 48 hours before the disqualification notice was applied. If we do not do something like that, my real fear is that we will create a scenario in which someone disqualified in Kalgoorlie but who lives 1 000 kilometres away in a remote community will take the risk of driving home after the disqualification has been issued and will be pulled over again for driving while disqualified.

We are setting up a scenario that will have further consequences for the individual and the rest of his community. I am not sure which section of the act would be the appropriate section for this provision to be inserted. In respect of the points the minister made about the 10-day period, my understanding is that that is the period within which the proceedings will be commenced, but that the disqualification applies from the issuing of the disqualification notice. The minister is right that the legislation provides that the officer will have to issue the disqualification notice on the spot. I share the concerns raised by Hon Max Trenorden, and I would be very keen to try to find a way that would meet both the policy of the bill and the government's intent. The term "extreme hardship" already exists in the legislation, but we need to find some method through which that could apply. I do not know Hon Max Trenorden's views on this, but I think a 48-hour period of deferral of a disqualification notice would not be unreasonable, if the person could demonstrate extreme hardship. The person would probably have to be given 12 hours to sober up, but a period of 48 hours or something of that order would be reasonable. Otherwise we will run the very real risk of setting up a scenario that will result in people driving while under a disqualification notice.

Hon SIMON O'BRIEN: It is an interesting point. If Hon Max Trenorden had raised it earlier, I might have had a chance to discuss it with the Minister for Police.

Hon Max Trenorden: I apologise for that, because I was on very, very important government business over the water when this matter came up. I apologise to the good people around the table and to the minister because I wasn't in a position to be at the briefing.

Hon SIMON O'BRIEN: No apology is necessary; I am just observing that it is a pity it was not discussed with us before, simply because I cannot give the member the responses as promptly as I would like to. That is the only reason I mention it. As Hon Ken Travers pointed out, this policy is in the custody of the Minister for Police even though the extraordinary driver's licence element is with me. As members know, with some legislative changes we will see the Road Traffic Act split into two components and sent to the representative ministers in due course. That is something for another day.

It is important to understand what the matters are here. I would put it to members, with respect, that the sort of scenarios that we have been contemplating can, and do, arise now. Yes, the penalties are awfully inconvenient but, to some extent, that is the point. When a person is picked up for having a blood alcohol level of over .08, there is no way we would allow that person to get behind the wheel of a car. Issues arise about that person

needing to get home or to some other destination, but these are things that the police have to consider all the time. It happens very frequently. It has happened before and it will happen again regardless of what the law says.

Hon Ken Travers: When the minister says "the police consider", is he saying that a mechanism in this bill allows police officers to not issue the disqualification notice immediately or is the only consideration to not charge the person?

Hon SIMON O'BRIEN: To clarify for the benefit of the member, when I said "the sort of things a police officer has to consider", I meant the sort of things police officers are presently confronted with when arresting a person for drink-driving. Police officers must ask themselves, "If I take any action to apprehend this person, what is the future for their car?" Will they get back behind the wheel? What will be the ramifications of my actions?"

Hon Ken Travers: In a drink-driving circumstance, I would not have thought that a police officer would be able to use their discretion to not charge an offender. In fact, if this legislation encourages police officers to use their discretion not to charge an offender, I think it has the opposite effect of what we are hoping for.

Hon SIMON O'BRIEN: No, that is not the case at all. This part of the legislation concerns making sure that a disqualification that is going to happen anyway, happens at the time that the offence occurs. It is far more relevant to be disqualified at the time of the offence than at some remote time, perhaps three, six or 10 months down the track. I would submit that it is a fairly simple thing. Yes, some people will be inconvenienced. There is no question that when a person is apprehended and loses his or her licence, there will be inconvenience.

Statistics were referred to earlier about people who go to court to apply for extraordinary driver's licences. They talk about the inconvenience caused. It is not only about the inconvenience caused to the offender. If the offender is an employee who must drive in the course of his or her work, yes, the three-month disqualification of their licence will impact on the employer or the whole firm. That is part of the penalty. A convicted, suspended driver who has let his employer down, will incur the displeasure of his employer as a consequence of his actions. I do not think there is any getting away from that.

When a person receives a sanction and has to pay the price by having his licence suspended, inconvenience will be caused. When the penalty is a monetary fine, yes, that will impact on the offender and the rest of his family, perhaps on his children, the household and people whom he owes money. If the sanction imposed on someone is to be sent to prison, yes, that affects not only the offender, but also his family, his employer and other people who he is associated with. It is unpleasant when we get down to it, but unfortunately that is the nature of offending and punishing. If we are going to pass sanctions through this Parliament, we must be dinkum when the time comes to apply those sanctions. Just because people say, "Hang on, that's hurting", we must be careful about saying, "This law does not apply to you". We cannot do that. That said, a provision in this bill provides for extraordinary circumstances, but I do not believe that proposed section 71C is intended for the purpose that the member asked about. It may work in that way on some occasions—I do not know. I will not say that is the purpose of the provision, however, because I do not believe it is. This provision will certainly make people think twice about drink-driving if they are 300 miles from home.

I will sit down in a minute, Deputy Chairman, because I think we must make progress. I will undertake to talk to the Minister for Police about this matter. I would like to make progress on the bill in the meantime, but I will talk to the minister about it because the member has raised some practical considerations. I submit that none of those considerations should cause us to shy away from supporting this proposed law.

There will be an education campaign about this legislation. The fact is that people have their licences suspended and this impacts on convenience and whether a person can visit loved ones 10 or 300 miles away. Suspending licences impacts on offenders and whether they can fulfil their obligations as employees. That is what this bill is all about. It is a bit of an absurdity if we said to an offender, "You will be suspended for three months at a time of your convenience". That is the ill that we are now trying to attend to.

Hon MAX TRENORDEN: I apologise to the minister, because he is responsible for the Road Traffic Legislation Amendment (Disqualification by Notice) Bill 2010 and that is the bottom line. I apologise to the good people around the table because normally we would have discussed this on a different occasion, but in the circumstances it did not work out that way.

I think some things are different here. I think a .05 blood alcohol level is when one is caught. If a person is on a country road and an officer picks that person up—it happens on many occasions that a person does not then drive off—and if he later drives off, he can go again obviously. But if a person is below .05 he is allowed to go home. That is the current set of circumstances. Under this bill, as I read it, a person will not be able to go home.

Hon Ljiljanna Ravlich: If a person is under .05?

Hon Ken Travers: Is it not under .08?

Hon MAX TRENORDEN: The person's alcohol blood level does not matter because he has already got the infringement. I will keep going because the minister can respond the best he can through advice. That is one point.

Personally, I am on the minister's side. I think we have to be responsible for our own actions. That is not what I am trying to say. I think if a person cannot go to the Eagles next week or visit his girlfriend or whatever, that is too bad and not my concern. It is not my concern if an employer finds out about a drink-driving offence or if an offender cannot do his or her job. The concern is that the disqualification is very sudden. Under the current process, a person can turn up to work on Monday and say to his boss, "Look, I have been pinged", and the employer has some capacity to do something about it. Under this piece of legislation, the employer does not have any capacity. From the day of the offence, the employer is penalised. At some stage I am happy to talk about the meaning of extreme hardship. I think that if a person drinks and drives, that person should be penalised. That is not the point I am trying to make.

We have debated the following issue in this place for as long as the houses have been here: police officers have the capacity for discretion under most sets of legislation. I suggest that this bill takes away that capacity. For example, there was a case in my hometown in which a police officer stopped a friend and said, "If you drive this car, I will book you," and took the friend home. I do not want to get the police officer in trouble, so I will not say who it was. The police officer came back and parked in the sideway. The friend was dopey enough to come back and pick up the car and the police officer booked him. That is good policing. Therefore, I think that —

Hon Ken Travers: Are you sure it was a friend, Max?

Hon MAX TRENORDEN: They may not be friends any more, but that is all beside the point.

Hon Ken Travers: You know the old thing of "a friend of mine"?

Hon MAX TRENORDEN: It was not me I was talking about, luckily! But the point I make is that police officers in the country have a superb record of being thoughtful in the way they carry out their role. I am just concerned that when people get picked up in this case, the legislation will take that ability for discretion away. If the police still have that discretion and some capacity to delay the infringement for a period of time, I will support the bill. However, it is intolerable to have someone stranded hundreds or thousands of kilometres from home. I know it is unfair to ask the minister these questions, although he has some advisers at the table with him, because he is not the minister who introduced this bill. However, if I can be given some assurance that police officers will still have that ability to use some discretion in how they carry out their duties, I will not have the same degree of concern about this legislation, and all I will talk to the minister about is how we define the term "extreme hardship".

Hon SIMON O'BRIEN: I think I can reassure the member, although possibly not in the way that he wants. I think it has been a useful discussion that is perhaps probably best restricted to those who are involved in observing these things. However, in answer to the specific questions that the member has asked, "exceptional circumstances" is the term used in this bill, rather than "exceptional hardship", which is for extraordinary licences. In the case of disqualification notices, the term "exceptional circumstances" is used. "Exceptional circumstances"—this is referred to in the bill that is before us and we will come to it shortly—is deliberately not defined, but it provides a way for a disqualification notice to be reviewed and possibly revoked. It might well be that in the case of a review and revocation that it will enable a court to deal with the matter at some other time. I am not going to speculate about that. There are ways of dealing with exceptional circumstances.

The member asked about police discretion. There is nowhere in any statute that the member will see it written that police have police discretion, but I say to the member that it does exist and there is nothing in this bill that says that it will not exist after this legislation is passed. I think it would be a sad day when we have officers who will not exercise police discretion in the appropriate circumstances, but it sure as heck is not something that we can legislate for. It is a bit like commonsense; we cannot legislate for it but we like to see it. It certainly is not something that I am going to confirm the existence of while I am at the table in the chamber. However, police discretion will continue to exist in the same way that when people get hit with the consequences of their offending behaviour, it is sometimes going to hit them a bit harder than it might have if other circumstances were a bit different.

When it comes to the immediacy of suspension for an employee who needs his licence for work purposes, it simply means that he has let his employer down by his offending behaviour and he will have to take the consequences that come from the employer as well. Therefore, I hope we have done that.

I do not know what else I can say on clause 1, Mr Deputy Chairman.

Hon KEN TRAVERS: I do not disagree with the minister insofar as I do not care that in 99.9 per cent of circumstances it will cause inconvenience. That is the point of this bill; I accept and understand that. I think that Hon Max Trenorden has outlined the possibility of a circumstance whereby there will be extreme hardship. I understand that when we get to clause 11 of the bill, we will deal with the provision to apply to a court in exceptional circumstances, which would not be able to occur for at least 14 days after the issue of a disqualification notice. That assumes that someone is able to find a lawyer who could prepare his case and have it submitted to the court, because people need to give at least 14 days' notice before an exceptional circumstances application can be made.

I concur on the employer–employee situation and I understand the point that the minister made. However, I think that there is potential to set up a situation in which there will be extreme hardship by removing a licence from someone who is then isolated and has no capacity—because we are not talking about areas where people can catch a bus—to get home. If people could catch a bus home but it will take 48 hours on the bus, again, I say that is fine; they can catch the bus home and it serves them right. However, if people live in a remote Aboriginal community and there is no other way of getting to that community without a licence and being able to drive, I know what will happen; people will drive and potentially suffer the consequences of getting done for driving while disqualified. Again, they would have to suffer the penalties for their actions.

I want to try to move the debate along, so I suggest that if we were to make an amendment to address the issues raised by Hon Max Trenorden, which I think would gain his support and also remove the concerns that have arisen in my mind as a result of the member's comments, that should occur in clause 11 of the bill. If we move on, the minister could maybe give an undertaking to go away and talk to his colleagues if we get a break from the chamber between now and reaching clause 11. Even if we get to clause 11, we could maybe adjourn and go on to debate the mutual recognition bill and come back to this bill later, or something like that, so that the minister can get instructions. However, we should at least get up to clause 11, because it strikes me that if we were to amend the bill, clause 11 is where the amendment would be made. I am happy if the minister wants to check with his advisers whether I am right in the assumption that that is the appropriate place in the bill to make an amendment. The amendment would comprise a very, very narrow set of words to provide some sort of discretion to delay disqualification for a minimal period in circumstances of extreme hardship and the police officer would be given an element of discretion to make that choice. I just think that would provide—I do not want to put words in the member's mouth—the sort of coverage that would address Hon Max Trenorden's comments, and it would certainly allay the concerns that have arisen in my mind as a result of his comments. I think that 48 hours would be long enough to allow the person to sober up, get into his vehicle and drive home. The driver could be issued with the disqualification notice but it would not take effect for 48 hours.

As I say, I am at one with the minister on this bill in its general sense of purpose to say, "Right; you get hit and you get hit hard and you have to understand the implications of what you have done." The way the legislation is currently drafted is spot on for 99.999 per cent of people, but I think there is one small category of people on whom it would place absolute extreme hardship over and above what I think would be our desire as a Parliament.

Hon SIMON O'BRIEN: I think the way ahead might be that I give the response that I am about to give and then we move on, if the Committee of the Whole is agreeable. Before we proceed we have to deal with clause 1. We cannot put off clause 1; therefore, if members want to defeat the bill at this stage, they must oppose clause 1—they do not have two bites at that cherry. However, I propose the following. These are some fresh considerations that I do not think should be the subject of amendment on the floor of the chamber. We might be able to deal with it behind the Chair shortly, or it might even take a few days before we come back to another sitting day, but either way I do not want to spend any more time talking about it right now. I think we all clearly understand that. I am contemplating, for example, an administrative device, recognition of which may able to be incorporated in this bill and which might deal with that problem, which Hon Ken Travers has just defined as affecting that bit other than the 99.999 per cent of cases that we are quite happy with. It may be that we can do that. What I propose is to proceed now with clause 1—I hope we will be able to proceed with it—and then when we get to clause 11, I might suggest that we defer consideration of that clause so that we can get on with some other matters.

Hon MAX TRENORDEN: I thank the minister for that. I want to make a few more points, and I promise the minister that will be the end of it because I agree that the minister has been conciliatory in the process, which I am pleased to hear. I want to support the bill, but I have this concern.

I want to make the point that if a hoon—not a drink-driver—does this at the back of Timbuktu, the state comes and picks up his car. That is what we do. It is quite a contrast between the two. People have these nice little earners going on, whereby they drive hundreds of kilometres to pick up the hoon's car and bring it back.

Hon Jim Chown: And impound it. They do not give it back to you!

Hon MAX TRENORDEN: It is a nice little earner for the firm. As a state, we agreed to that: we will go and pick the hoon's car up and put it in the compound and keep it safe and, yes, it will cost. We do that, but in this circumstance, we do not. I want the minister to be clear that all I need to make me happy is to make the discretionary process available. I hope that is clear in the minister's mind.

Hon ALISON XAMON: I am keen to move on from clause 1 as well. I notice that we have canvassed a number of issues that we can explore in further detail when we get to those provisions. Obviously, clause 11 is a particular sticking point, but also we need to have some further discussions about provisions around extraordinary drivers' licences and the like, and I would prefer to canvass those issues in the specific clauses. However, I did want to make clear that where the Greens (WA) are coming from on this is different from the issues that have been raised in this place. Our concern is about the presumption of innocence. It is not necessarily worrying that people who have been drink-driving are suddenly going to have their drivers' licences taken away from them. I am of the firm view that if people are drink-driving, they need to pay a price, and quite a harsh one too, because all the evidence has demonstrated that people die as a result of drink-driving. The concern for the Greens, which we will canvass further in clause 12, is for those people who are innocent but are losing their licences anyway. I understand that the minister has presented figures that approximately 30 people have been successful in opposing charges. That may sound like a relatively small number of people, but not if one happens to be one of those 30 people who have been wrongly charged. Under this legislation, those 30 people would lose their licences. The repercussions can be severe. Having a licence, in my opinion, is a privilege, not a right, so if we violate that privilege, we should lose our licences. By the same token, if one has not done that and one loses the licence anyway, the repercussions of losing a licence can be enormous. It means that people can lose their jobs, and there can be consequences for health. Unfortunately, we have become very dependent on the private motor vehicle as a means of transport in the way we live and progress our livelihoods, so this can never be taken lightly.

Hon Simon O'Brien: This bill will encourage people to use more public transport! Surely you would support that, wouldn't you?

Hon ALISON XAMON: I would absolutely love it if the outcome of this legislation is an undertaking from the minister that he is planning on pouring millions of dollars into our public transport system so it can operate 24 hours a day to allow nightshift workers and the like, who really do need extraordinary drivers' licences, to catch public transport. However, I am going to suggest that perhaps that is not the undertaking coming from the Minister for Transport right now. But if the minister would like to get to his feet now and confirm that, as a result of the passage of this legislation, he will be putting millions and millions more dollars into public transport, I am sure the Greens will be happy to look at some of the provisions further and see whether there can be some amendments that would mean we could proceed with this.

Hon ED DERMER: I wanted to get the minister's advice on the most appropriate clause to explore the matter that I raised earlier of people who are physically unable to perform a breathalyser test at such pressure as to satisfy the officer attending. Would the minister rather me spend a few minutes on that now or when we get to the clause?

Hon Simon O'Brien: I would have thought clause 7 might be the appropriate place.

Hon ED DERMER: I am happy to take the minister's advice on that.

Hon KEN TRAVERS: Just to allay any fears of the minister, I have a couple of quick questions that are best dealt with under clause 1, and unless something else arises during the debate, I have nothing else to raise. One of the things that attaches to the concerns that have already been raised, and other concerns that will arise as we go through the detail of this bill, relates to remote area communities. I know the government has conducted a major review into the whole issue of licences in remote areas. I do not expect the minister to divulge any great secrets of cabinet, but I am sure as the responsible minister for this area that the minister will be able to update the chamber on that. I am asking for an update of what has come out of the public consultation with respect to dealing with licences for remote areas, the testing and all the rest of it. An update on that may allay some of the concerns that members have before we get into the detail of the more complex areas of this legislation.

Hon SIMON O'BRIEN: I certainly would not be able to put this anywhere else, other than clause 1. I think we can fit it in there as it is relevant. Even though it is not dealt with under the other clauses of the bill, I confirm

that a project has been in train for some time and involves the Parliamentary Secretary to the Minister for Transport, Murray Cowper, MLA, who, with a range of others, principally from the Department of Transport but also significant representations from Police, Corrective Services and Attorney General and so on, are looking at remote area licensing issues, which are significant, as the member suggested. This is relevant to this bill in the sense that there is a strong recognition that things are different in different parts of the state. Even sitting for a driver's test is a totally different thing in the West Kimberley from sitting the test in suburbia. For example, in the West Kimberley, there may not be asphalt under one's vehicle, or footpaths and kerbs to do three-point turns, or pedestrians, lamp posts and stop signs, much less traffic lights —

Hon Ken Travers: You might have a pothole.

Hon SIMON O'BRIEN: Not on a state road!

Hon Ken Travers: Is that a guarantee?

Hon SIMON O'BRIEN: No, it is not. Then not far away, in a Kimberley sense, when someone receives his or her driver's licence, there is a bit of suburbia in the local town—Broome, for example. Our driving examiners have to consider those things. We have heard from Hon Max Trenorden about how the impact of this legislation in regional areas might be quite different from its impact in the middle of town. That is recognised. The point of my response, Hon Ken Travers, is to say that yes, that project is going on. It draws on some of Ben Wyatt's experience, when he reported on this in, I think, 2007. That experience has been taken on board. Some significant issues, including a range of other social issues, go way beyond the licensing issues. It offends me that a lot of people who have never had a driver's licence are in jail for nothing more than having driven repeatedly without a driver's licence. That is happening now, it has been happening for a long time, and there are a whole range of flow-on effects in terms of employment and cycles of deprivation and so on, which is why we are looking at that. I think the purpose of the member's question was to seek reassurance that we are looking at that, because it would indicate that the same empathetic view is being taken about this bill and how it will impact on people in remote areas; and, indeed it is, even though the letter of that consideration is not displayed in the bill itself.

Hon KEN TRAVERS: I appreciate the minister's comments. I want to raise another issue under the short title; namely, the application for and issue of extraordinary licences. The minister will recall the article in *The West Australian* which I referred to in my contribution to the second reading debate and which went through a number of different case studies. One of the issues that —

Hon Simon O'Brien: Is this the one in the paper the other week talking about half a dozen different courts?

Hon KEN TRAVERS: Yes. I think that as a result of that article the minister was interviewed on radio by Paul Murray. He may recall one issue raised about wording and the way in which different magistrates interpret existing legislation. According to the opinion of the journalist who wrote that article, there are quite divergent interpretations of existing legislation when extraordinary licences are being applied for, including those applications under the extreme hardship provisions that everyone will now be required to demonstrate if they wish to get an extraordinary licence. It was alleged that people were magistrate shopping; that is, they were trying to organise to appear before a magistrate who is more sympathetic rather than less sympathetic on these matters. I know that in his interview with Paul Murray, the minister indicated that he would raise those concerns with the Attorney General. I recognise that this is not solely in the minister's portfolio area. I wonder whether the minister can now tell us whether he has raised those concerns with the Attorney General; and, if he has, what was the outcome of that discussion? Will there be any administrative changes made as a result to try to address the issue of magistrate shopping or to achieve uniformity in the way different magistrates deal with these matters?

Hon SIMON O'BRIEN: Using a bit of licence with respect to clause 1, as we sometimes must, I recall my on-air discussion with Paul Murray. It was in response to an article in *The West Australian* about a variety of cases and, apparently, the different standards of outcome from different courts. Who knows? We may have been privy to all the information we needed to make an assessment, but I suspect that perhaps we were not. In his second reading contribution, the member referred to the question of comparing anecdotal advice with statistical data, and here in fact we have a tabloid source.

Hon Ken Travers interjected.

Hon SIMON O'BRIEN: But I have lots of anecdotal advice that tells me that in fact lots of magistrate shopping goes on in connection with these matters. The matter was raised with me on air, I said that I would discuss it with the Attorney General, and, by the way, I have discussed it with him. I have not raised it in the sense of a formal referral, but I have discussed it with him, and it is something that we will discuss again. In the interview the member referred to, I acknowledged that this bill to deal with extraordinary licences was already in the

Parliament and that was how we were progressing the matter. That is what Paul Murray was asking me about. Obviously, any fruits of a discussion with the Attorney General are not reflected in this bill; they are not in front of the chamber. If there were to be any administrative changes exercised by the Attorney General, that is a matter for the Attorney General.

Hon Ken Travers: But you understand the point I am making is that we in this place will make changes about extraordinary licences, but if magistrate shopping is still going on, there is the potential for people to find those soft magistrates to get the outcome they want—even if we pass this legislation. My point is that I do not want to pass legislation only to find people still getting away with magistrate shopping.

Hon SIMON O'BRIEN: The fact remains that a court has certain criteria that it must address in this matter, as it does in other matters. It cannot go beyond the parameters laid down by the law—if any are laid down. That therefore restricts the courts. I suspect the phenomenon of magistrate shopping will continue to some extent—that it is something we will never completely solve. If we look back through history, we see that some magistrates have been seen to take stronger or more lenient views. They used to use the expression "hanging judge" in relation to some matters. I guess people will always have their reputations.

I will conclude by observing that although we can often note apparent anomalies when they are presented to us, the fact of the matter is that, I am sure, all our courts and all our judicial officers apply themselves diligently and interpret the laws that they are required to interpret in absolute good faith at every opportunity. Sometimes, people being people, we may disagree with some of the outcomes. However, the purpose of this bill is to more sharply define the parameters in which the Parliament wishes our judiciary to view the matters for extraordinary licences it is dealing with.

Hon Ken Travers: Thank you.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 6AA inserted —

Hon MAX TRENORDEN: With apologies to the good people at the table of the house, I would have asked, had I been able to get a briefing, what the delegation of the commissioner's powers to not only police officers but also particular civilian employees or a specified class of officer means. It is a pretty broad statement in the explanatory memorandum, but I imagine that some of my concerns with this part are met because the powers of the commissioner are quite wide. From my reading as a layman, this clause allows the commissioner to make a statement delegating to a police officer or a civilian employee or a specified class of police officer. I am wondering whether my reading is correct.

Hon SIMON O'BRIEN: I think the member's reading of it is correct. This clause is about delegating a range of tasks that should be delegated, in the same way that elsewhere in the Road Traffic Act the member will see that the Director General of the Department of Transport can delegate a heap of functions. That is easier to interpret because obviously the director general will not issue every licence renewal that comes up or conduct every vehicle test. The scope of the Commissioner of Police's duties is narrower in an administrative sense, but there are all sorts of powers under the Road Traffic Act that he may have to delegate. They include, for example, events on roads, road closures, the appointment of wardens or school crossing guards and the selling of uncollected impounded vehicles. They are all functional things that we do not want the commissioner to have to personally deal with or sign off on. We might see something else delegated as a result of an earlier discussion but that does not relate to the Commissioner of Police.

Hon MAX TRENORDEN: I am balancing up this clause, depending on the result of the minister's good efforts. In my experience of country living, a police officer may feel that the best thing he could do under this legislation would be to ignore the person who was drink-driving because the officer would not have any leeway. A motorist might then be allowed to continue driving while above the legal limit, which could result in a bad outcome. In my experience, the Commissioner of Police regularly gives discretionary powers to his officers in those sorts of circumstances. I am not looking for an answer from the minister; I am just making the point that the commissioner is always watching what is occurring in his jurisdiction and that the commissioner would not want a police officer to be put in the position in which the officer was tempted to allow someone who is over the legal limit to continue driving.

Hon ROBIN CHAPPLE: I might be totally on the wrong track, but the minister said earlier that the delegated power would enable the Commissioner of Police to do a number of things, one of which was to sell vehicles. Is it proposed that confiscated vehicles or vehicles that are impounded through this process would be sold?

Hon SIMON O'BRIEN: They are being sold now, but the member's question has nothing to do with this bill. This is quite a simple machinery device that creates a head of power for those parts of the Road Traffic Act under which it is functionally practical for the commissioner to delegate. There are 1 001 things for which the Director General of the Department of Transport has the power to delegate to his operational officers.

Clause put and passed.

Clauses 5 and 6 put and passed.

Clause 7: Section 66 amended —

Hon ED DERMER: I appreciate the minister's earlier advice. I am concerned about people whose physical incapacity prevents them from being able to respond to a police officer's invitation to perform a breath test because of a lack of sufficient air pressure to satisfy the requirements of the breath test. We started this discussion by way of interjection earlier. If I recollect correctly, the minister was explaining that a police officer may have the discretion to insist that the driver take either the breath test or a blood test as an alternative way of establishing the person's blood alcohol level. Can a driver freely opt to go straight to a blood test rather than perform a breath test at the request of a police officer?

Hon SIMON O'BRIEN: In responding to the member's query, which we can deal with promptly and without the need for an extended discussion, I am sure, we must firstly consider the current provisions in sections 66 of the Road Traffic Act. They provide that the person who is to be subjected to the test can elect, if the person prefers, to have a blood test rather than a breath test. For the reasons I explained during the second reading stage, which the member was very attentive of, that is proposed to be changed so that the first recourse will be the breath test. We have already discussed the technology that allows for a more accurate breath test than used to be the case. That, in part, is the reason for the change. We are also doing away with the provision for the person to, right up-front before a test is done, elect instead to have a blood test. Again, that is for the reason I explained earlier, which is that that provision was being abused. It is proposed that a breath test will be the first option. A police officer, for whatever reason, can require the driver to take a blood test instead. A police officer could reach that view for any number of reasons, some of which would be quite apparent. Perhaps the person has difficulty breathing, has had a tracheotomy or the breathalyser records that there was insufficient air pressure to get a reading. It is intended that when it is impractical to take a breath test because of a person's physical incapacity, or whatever reason, the next resort is to have a blood test if the officer considers it necessary.

Hon ED DERMER: The minister's explanation is very clear, but the concern remains. It has been suggested to me by a member of the public that in the past, under existing arrangements, that person was physically incapable of providing sufficient air pressure from his or her breath to provide a valid test. Under those circumstances, the police officer in attendance reached the view that the person was trying to avoid the breath test, and put the person through all sorts of onerous exertions to force that person to undertake a breath test that he or she was physically incapable of providing enough air pressure for. I fully accept the importance of providing a proper blood test and not someone pulling the rort that the minister suggested earlier today about insisting on his or her own doctor. The doctor may not be available for five or six hours to conduct a blood test. That is a rort that I understand this bill will prevent anyway. I am concerned that in a situation in which a person may not be able to perform a breath test, he or she may not be able to convince the police officer in attendance of an inability to do so. That may lead to a situation in which a person who is unable to perform a breath test may be reluctant to drive because he or she could be confronted with a circumstance in which a police officer does not accept he or she is incapable of performing a breath test. I would appreciate the minister and his advisers exercising their minds to find a satisfactory solution to such a scenario.

Hon SIMON O'BRIEN: That is a constructed scenario, but nonetheless something similar has obviously occurred in the experience of Hon Ed Dermer's constituent. This bill, and indeed the act, does not deal with police officers dealing with tact or skill with all people they encounter. If a constituent has had a difficult time with a police officer who is not perceptive enough to see that the person was not physically capable of providing a breath test, that is regrettable, but it is not really anything to do with this bill. If it has happened before, it could happen again. It really needs to be taken up in some other way. I do not know whether the person Hon Ed Dermer mentioned was ultimately charged with refusing a breath test. All we have at this stage is one side of the story as expressed by a third party in Hon Ed Dermer. With respect, I do not think we have the capacity to deal with the issue on the floor of the chamber. We rely on police officers to use their commonsense and understanding in these situations and, regrettably, perhaps sometimes they may not act in a way we would like them to. I wish to proceed with what is in the bill rather than pause on things that probably do not impact on it. I am not sure that the bill before us impacts on the member's constituent at all. That is really something that is affected by other matters.

Hon ED DERMER: I may have misunderstood the minister's earlier point. I thought the minister suggested that the discretion that a driver has currently to choose a blood test would be removed by the effect of this bill.

Hon Simon O'Brien: Yes.

Hon ED DERMER: In that sense, I think my point is very relevant to the passage or otherwise of the bill.

Hon Simon O'Brien: Did the honourable member's constituent ask for a blood test?

Hon ED DERMER: The person who spoke to me, a constituent, said that when he was unable to provide sufficient air pressure for a breath test, he asked for a blood test. In the end, the police officer insisted on his performing something that would have been, firstly, impossible and, secondly, would have caused significant pain; that is, a breath test. This is a bit surprising because the minister is telling me that under the current law a person can opt for a blood test straightaway. I fully accept and I am pleased that the bill is set out in the way that the minister explained earlier and would preclude someone avoiding having his or her blood alcohol level tested. Given that the bill will remove that connivance that the minister referred to earlier of a person avoiding having his or her blood alcohol level tested by a blood test, I cannot see why it would not be quite reasonable for a person to choose to have a close to immediate blood test rather than a breath test. It would certainly overcome the problem of someone who would genuinely be distressed by the process of a breath test but would not be similarly distressed by a blood test if the person had a choice between the two.

Hon SIMON O'BRIEN: The policy of the bill is to move away from having an option of a blood test, an option that I do not think very many people have opted for anyway. I outlined the reasons for that earlier. They include the greater accuracy of breath tests and so on.

Hon Ed Dermer: For most of us, a breath test is a very simple thing to undertake, but it is not for everybody.

Hon SIMON O'BRIEN: It is very straightforward, plus we are concerned about the immediacy of results, which again militates in favour of a breath test being the standard. In large part, that is what this bill is about.

However, we recognise the situation that would apply with the constituent Hon Ed Dermer was dealing with. That is why there is still provision for the police officer to require a blood test instead. It would be the only practical option when someone cannot give a breath test, such as the situation that occurred with the member's constituent. I guess that means that we are in furious agreement about it. That is the position that will apply in a very small percentage of cases in which someone cannot give a breath sample; instead, the person will have a blood test, if anything.

Hon ED DERMER: The point of difference is now confined. I am suggesting that people who are unable to provide a sufficient breath test without causing pain and distress to themselves or are just unable to do it full stop should have the option of opting for an immediate blood test. Quite clearly, it is much simpler for a person who is able to have a breath test to have a breath test. It stands to reason why people choose a breath test rather than a blood test under normal circumstances. The point of difference between the minister and me at this stage is that what he is suggesting means that the police officer should have the discretion to choose a blood test rather than allow the driver to choose an immediate blood test or near immediate blood test if he or she wishes to do so. I am yet to hear a convincing reason from the minister as to why the driver should not have the right to choose an immediate or near immediate blood test rather than a breath test.

Hon SIMON O'BRIEN: There were 475 000 random breath tests carried out over the past year.

Hon Sue Ellery: One last night!

Hon SIMON O'BRIEN: Including one of a pre-eminent citizen just last night, which I understand was passed with flying colours.

Hon Sue Ellery: Of course.

Hon SIMON O'BRIEN: Despite the accuracy of the testing equipment!

Hon Sue Ellery: Are you casting aspersions there?

Hon SIMON O'BRIEN: No!

For most people, it is a fairly straightforward thing; they are not concerned about blowing positive because they have not been drinking, or they do not have a physical incapacity to deliver a breath sample. The vast majority of people go that way. However, there are a very small number of people who cannot provide a breath sample. In that situation, a blood sample can be taken in lieu. However, there is a point that I have not raised with the member before, and if I raise it now, it should convince him. There are also a small number of people—it is actually probably quite a large number of people, but relatively small—who, knowing that they are likely to blow positive, falsely claim that they are incapable of taking a breath test because of some injury or strain that

prevents them from blowing into the breath testing unit. That is what happens in real life, and that is why police officers have to make decisions. Sometimes they may be a little slow, for the reasons I have just described, to gain a full understanding of given circumstances, as may have happened in the case of Hon Ed Dermer's constituent. There are always two sides to every story, but that is the predominant reason it has to be done. If it caused inconvenience to, in this case, the constituent referred to by Hon Ed Dermer, it is regrettable, but there is method in what is being done, and although hundreds of thousands of people are being inconvenienced, as Hon Sue Ellery was last night, that is nevertheless what happens; it is part of the regime. I do not propose to change the law to accommodate the situation that Hon Ed Dermer is concerned about.

Hon ED DERMER: If a person thought he was likely to have a blood alcohol level in excess of that allowed under the law and had the option of either a breath test or an immediate or near-immediate blood test, and chose the blood test, the blood test would also indicate that the blood alcohol level was in excess of that allowed under the law.

Hon Simon O'Brien: But that is not what happened with your constituent, was it?

Hon ED DERMER: No, it was not. The police officer insisted on the constituent performing a breath test, which the constituent was unable to do without considerable suffering. All I am suggesting is that it be open to the driver to choose between a breath test and an immediate or near-immediate blood test. Obviously one of those options will be quite possible for a person who is physically incapable of giving a proper breath test—that is, the blood test. The option of a breath test is not open to such a person, and both options would provide a reliable assessment of the blood-alcohol level of the person concerned. I have yet to hear from the minister any reason why that option should not be available to the driver.

Hon SIMON O'BRIEN: This debate is starting to go around and around in circles, and it will come to a point at which we will have to move on. I am indicating to the member that, based on the experience of 475 000 interactions with drivers per annum, it is preferable for a range of reasons to rely, in the first instance, on the breath test. But if the officer requires it because of the inability of the person to complete a breath test, for example, the person can then go on to have a blood test. If Hon Ed Dermer is seriously saying that this person was forced to undergo physical pain or other distress by the officer who was dealing with the person because the officer was so insensitive that he or she could not get it that the person was incapable of providing a breath test, then I do not think there is anything that we can put in this legislation to deal with that sort of pig-headedness. I do not, in the absence of knowing all sides of the story, necessarily accept that that is the truth. I know that a lot of people try it on and claim that they are incapable of blowing or that it would cause them pain to try to blow into the breath-testing unit. How do I know it? I know it because that is the experience of all our officers out there on the beat. I say that without any reflection on Hon Ed Dermer's anonymous constituent because I simply do not know what the truth is, but I do know that there are two sides to every story and I do know that this dialogue is not getting us anywhere. It is the case, as I understand it, that what we are proposing here is consistent with the legislation in every other jurisdiction. In the same way that we cannot prescribe every type of behaviour in every piece of legislation, I believe this legislation that we have in front of us is the best fit operationally. That is why we have gone to the trouble of bringing it before the chamber.

The DEPUTY CHAIRMAN (Hon Jon Ford): Before I give the call to Hon Ed Dermer, I have been listening very carefully to the questions and answers toing and froing. The opinion that I am forming is that a similar question has been asked three or maybe four times resulting in a similar answer. I am just drawing to the member's attention that if I were to form the view that the question was asked for the fourth time, I would take the view that it was tedious repetition and would have no benefit for the debate. However, the member has the option to move an amendment or to vote against the clause.

Hon ED DERMER: It is a situation of hearing the answer to a question that puts forward irrelevancies and does not address the key point. The 400 000-odd ordinary tests on people who are quite capable of performing a breath test are totally irrelevant to my question. The police officer having the discretion is not the point. The question that I have endeavoured to ask a number of times is: what would be lost by the driver having the option of choosing an immediate blood test? That is the question that the minister has not yet answered.

Mr Deputy Chairman, I take the view that that is probably the third time I have repeated that question. I think it is worth raising again so as to point out the irrelevancy of the information put forward by the minister and to ask that he actually address that point.

Hon SIMON O'BRIEN: Mr Deputy Chairman, I will give it one more go. If the honourable member wants a single reason why, it is because opting for a blood test, for example, also delays the process of testing and all the things that may flow from it: the establishment of an offence, disqualification, getting the results and all the rest of it. That, for one thing, is an inconsistency with the policy that I think the chamber wants to pursue. I think I have shown sufficient sympathy to the case that the member has mentioned. But that is the single reason, if the

member wants one, why we do not want to go down the path of having the blood test option at the discretion of the person to be tested as an up-front option. It is so that we can get on with the business of identifying drink-drivers and dealing with them on the spot. Even though we recognise that some people may not be able to complete a breath test, the vast majority can and we want that to be the way in which we exercise this form of compliance check.

Hon MAX TRENORDEN: Clauses 7, 8 and 9 all make a similar argument that I will point out to support my argument. The minister will be pleased to know that I do not expect a response. The point of those three clauses is that the passage of time reduces a person's alcohol reading, which goes back to the original point I made when I first stood—namely, under the current arrangements, if people allow enough time to pass, they are not breaking the law if they continue to their destination. That is the point I am making. Therefore, in part, clauses 7, 8 and 9 support my argument.

Hon ALISON XAMON: As I mentioned in my second reading contribution, the Greens (WA) support this provision. However, I have a few questions and maybe a suggestion.

There would be effectively three reasons that people wish to opt out of breathalysing and have a blood test instead. That has been articulated. The matter we are clearly trying to address in this provision is those people who are drunk, who think they are drunk and who are trying to avoid being captured. Obviously, there are very good reasons that we want to tighten provisions around that scenario. However, there may be people who do not have faith in the breathalyser process who feel that they would be better served by a blood test instead, although I note that, given police err on the side of caution with the breathalyser results, it may be that if someone is close to the limit it probably is in that person's best interests to stay with the breathalyser result rather than take a blood test. The third reason is the issue that we are trying to get to the bottom of, which was raised in Hon Ed Dermer's contribution—namely, those people who genuinely cannot participate in the breathalyser process. I personally have been in that position. I had a severe asthma attack once and was pulled over and asked to breathalyse. I was able to finally use the breathalyser and my reading was zero, but it was quite difficult for me to do that. Certainly, the minister outlined some examples of people who would find it very difficult, such as people who have emphysema, people with tracheotomies, all sorts of people with lung conditions and the like, who are still nevertheless quite capable of driving. This is a genuine issue. I suggest that given the sorts of circumstances as described by Hon Ed Dermer that can arise, it would be good to undertake some sort of rigorous education programs for members of the police because they need to be conscious that they are dealing with people who are safe drivers but who may have illnesses or disabilities of some description that mean they cannot comply with the ordinary breath-testing regime. I think that is a salient point that needs to be pursued. I do not suggest any amendment, although of course I would be prepared to discuss any amendment if one was brought forward to improve that option. However, I think that at the very least we would be well served in promoting greater awareness of this issue in our police force. Having said that, I also note that there are sound policy reasons why we have removed the discretion for someone who is going to be subject to a blood test rather than a breath test to be able to pick and choose who will take the blood from that person, for the good reasons that were outlined in the second reading debate. I understand that it can be very difficult to find someone appropriately trained to do that, and certainly we do not want that loophole used by people who are drink-driving to avoid being charged. I think that the minister will possibly want to make some comments but, if not, I have some further comments.

Hon SIMON O'BRIEN: I assure the Committee of the Whole that the police minister will be taking close note of the comments made in the course of this debate and I shall underscore that by bringing them to his attention. It does not hurt the police to be reminded, necessary or not, about the matters that members have raised, although I am assured that they are given adequate emphasis in police training circles.

Committee interrupted, pursuant to temporary orders.

[Continued on page 9132.]

Sitting suspended from 4.15 to 4.30 pm