

ROAD TRAFFIC AMENDMENT BILL 2010

Second Reading

Resumed from 23 March.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [12.02 pm]: The Road Traffic Amendment Bill 2010 seeks to amend the amendments that were made last year to the Road Traffic Act 1974. The government was advised by the opposition and other parties last year that there were deficiencies in its legislation, commonly known as the hoon legislation. In the past few months those deficiencies have been well and truly publicly demonstrated. The bill we are considering today is the result of the public criticism that has arisen because the government failed to address those deficiencies last year when it had an opportunity to do so. I will go through some of the key points of this bill. I hope the Minister for Energy will be able to answer the questions I ask during my speech and provide additional information.

The legislation makes a couple of key changes to the amendments that we dealt with last year. Those changes will tidy up some of the grey areas, or loopholes, that exist. I will go through some examples to remind the minister why we are again making amendments to the Road Traffic Act. The bill will allegedly provide assistance to the police when they deal with those grey areas. The second reading speech outlines three key areas that will enable police to release impounded vehicles early. The first is —

...when the vehicle was in the possession of a vehicle service provider for the purpose of being serviced and at the time of the alleged offence the vehicle was being driven by the vehicle service provider or an employee ...

The best example of why that change is coming into place is the Lamborghini incident that occurred earlier this year. The Minister for Police put on a wonderful display of his best buffoonery in his handling of that incident. He did not handle the situation well at all. He was quite callous and unfair to the owner of the Lamborghini. He was quite dismissive of the owner's need to have his car back on the road, despite the fact that the hoon incident occurred through no fault of the Lamborghini owner. The lambasting of the minister on various talkback shows was quite amazing. That lambasting would have been a shock to the minister and the government as it demonstrated how the public viewed the minister's handling of that owner-driver's situation. The explanatory memorandum reads —

The amendments contained in this bill are intended to address a recently identified market failure relating to the inability to release an impounded vehicle where it is considered that there existed sound public policy reasons for releasing it.

That is an interesting way of describing the government's stuff-up, which was to race the hoon legislation through Parliament without being prepared to consider the matters raised by the opposition and other parties about its deficiencies. The Minister for Police had not been prepared to countenance any amendment that would have tightened the loopholes. Referring to a "recently identified market failure" is an interesting spin on the deficiencies of the legislation.

Hon Ljiljanna Ravlich: The minister is good at that.

Hon KATE DOUST: Yes, he is good at that.

It would have been interesting to see whether the government would have introduced this legislation to remedy the problems had it not been for the community's sharp and violent response to the way the minister handled the situation via both the written media and radio talkback shows. There was not only the Lamborghini incident; unfortunately, within the space of a couple of weeks there were three or four specific examples of cars that were removed from their owners and impounded because of a hoon incident that was no fault of the car owners. The impounding of those vehicles had serious implications for some of the owners. I will deal with those particular examples in a moment.

The second reading speech outlines the other key changes to this legislation and states that the bill broadens the ability of the police to release impounded vehicles early when —

...the vehicle service provider provided a loan vehicle to the offender while the vehicle service provider was servicing the offender's vehicle; or, the vehicle was for sale and was being test-driven by the offender for the purpose of a road test.

I refer to the example of the Mini Cooper that was loaned by Auto Classic, which is in my electorate in Victoria Park, to a person for a test drive. The owner of the car, Auto Classic, suffered financial discomfort when the car was impounded. I am not sure whether that matter has been finalised in court, but I think penalties have been

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imposed. Those are the three key areas that have been identified in this legislation that will assist the police in their decision to release impounded vehicles early. The second reading speech also refers to the Governor being able to make regulations to prescribe other circumstances for early release if and when those circumstances are identified. I want the minister responsible for the bill in this chamber to outline what those circumstances will be and what the regulations will provide for. Given the passage of time from the passing of this legislation in the other chamber to now—a period of six weeks or, perhaps, two months—I expect that the government has considered the types of circumstances that it will include in the regulations. I would appreciate it if the minister could provide that information.

The bill also provides that, rather than the particular car in question being surrendered, a surrender substitute vehicle notice will be given to the driver within 28 days. During my briefing on the bill, the advisers said that if the police did not issue that notice within the 28-day period, the window of opportunity would close. I ask the minister to confirm whether that will be the case. That is a very interesting situation. I am interested in knowing what resources will be provided to the police to enable them to obtain a substitute vehicle from a person who has offended. I am interested also in knowing what additional costs are being incurred by the police because of these constant changes to this legislation. I believe that the police are incurring substantial costs because of these impounding provisions. I will come back to that a bit later.

We have flagged three key concerns in the Road Traffic Amendment Bill 2010. Even though we regard this as catch-up legislation to deal with some incidents that occurred in the early part of this year, it is interesting that even after this legislation was introduced into this chamber, a supplementary notice paper was provided by the government that proposed further amendments to this bill. I look forward to the minister taking us through those amendments and explaining why these changes were not included in the bill when it was second-read in this chamber. I am interested to know why the government waited for the second reading debate before it proposed these additional changes to this legislation. I note that the additional amendments that have been placed on the supplementary notice paper are not dissimilar in flavour to the amendments that were proposed in the Legislative Assembly by the opposition spokesperson for police, Margaret Quirk, the member for Girrawheen. Those amendments were quite brusquely dismissed by the Minister for Police in that chamber. He did not seem at all keen to take on board those proposed changes. Those proposed changes would have tightened this legislation even more and provided greater clarity for everyone involved. The Minister for Police, Hon Rob Johnson, said last year when he introduced the first piece of hoon legislation—the first amendments to the Road Traffic Act—that he wanted to simplify the legislation and make it easier for people to understand. However, as we have seen demonstrated in the past few months, all he has done is create even more confusion. He has not simplified the legislation. He has only exacerbated the confusion about whether or not a person's car can be impounded.

My colleague in the other chamber began her speech by referring to a quote from *The Mikado*. I do not have old-fashioned musical tastes as she does. But I was thinking this morning that the best song that we could pick for this legislation is a song that Hon Sue Ellery tells me was originally a Beatles song —

Hon Giz Watson: “Baby you can drive my car”!

Hon KATE DOUST: Yes, “Baby you can drive my car”! That was actually a song by Fine Young Cannibals. It was a great song. What this legislation says is, “No, baby, you can't drive my car; it's going to be impounded”!

Hon Giz Watson: Or, “You can drive my car slowly”!

Hon KATE DOUST: Yes—slowly and carefully, I think.

I was trying to think of the right song, and that was the first one that came to mind—not the Beatles' version but the Fine Young Cannibals' version.

We are dealing with catch-up legislation. The minister has done a backflip on this legislation. He has finally turned around and said, “Well, maybe the amendments that have been proposed by the opposition are not all that silly, and maybe we should pick up on them.” When I raised this with the advisers from the department, they said that the minister had looked at trying to deal with these proposals in regulations, but he could not so, so he has come up with these amendments. We will be supporting the amendments that the government has put forward, because we think they will go some way towards resolving some of the issues of confusion, and provide greater clarity. They are not the be-all and end-all, but they will go some way. It might have made the life of the minister representing the Minister for Police a bit easier if the minister responsible had been prepared to pick up on those proposed changes in the other place—those well thought out and well drafted changes—because we might then have had a better piece of legislation come to this chamber. We all complain about how the Assembly just whacks legislation through without paying attention to the detail. However, just for once, we have had some sensible amendments proposed in the Assembly. I do not know whether Minister Johnson simply wrote those amendments off because of the person who had proposed them; because he did not understand them; or because

he has an intransigent position on these matters and thinks that the legislation that he has proposed will be a quick fix.

I do not know how this legislation will make people feel safer on the roads. I will be interested in the minister's explanation about how this bill will achieve the goal that is set out in the second reading speech. This piece of legislation has arisen in response to the negative feedback from the public about the poorly drafted legislation that we had to deal with last year. I would put it that this bill is just another example of this Liberal-National government's approach to legislation. We dealt with the previous hoon bill just before Christmas 2009. We have now found in a very short space of time that we need to have a second go at this hoon legislation. This is an example of what we will see in the future. I believe there will be other pieces of legislation that will come back to us to be patched up and have bandaids applied to them, all because the government did not spend the time to do the research that is necessary to draft legislation that will actually work, not only for people in the community, but also for the people who will have to implement that legislation.

It is not just members of the public who are highly critical of the way in which the government has handled the particular examples that have arisen under this legislation. The first example was the impounding of the Lamborghini in January of this year. That matter received a fair amount of media at the time, because it happened fairly quickly after the legislation had been proclaimed. That was a fantastic example of how this legislation can go wrong. Another interesting example was referred to in an article in "Inside Cover"—not a section of *The West Australian* that we normally like to quote from—on 8 March of this year. That was about a woman who was working as a cleaner and linen room attendant at Princess Margaret Hospital. This woman had had her car impounded, not because she had been driving recklessly, not because she had been speeding, and not because of any difficulties with her licence, but because she had loaned her car to her son. Her son had been picked up by the police while he had been driving that vehicle, I think because there had been a problem with the tail light of the vehicle. However, when the police checked his licence, they found that he was driving while under suspension, because he had run out of demerit points. That was something that his mother had not known about when she had loaned him her car. So, she lost her car, and she had no way of getting from her home in the hills to her work in Subiaco. She had made an application to get her car back on hardship grounds, but she had been knocked back. Therefore, the only way she could resolve her private situation was to take annual leave. I think she ended up taking all her annual leave, plus a week off work without pay. This poor woman was substantially penalised because of her son's behaviour. These are examples that have been raised in both this and the other place about what could happen "if". The legislation that we are dealing with today will purportedly resolve these types of issues. However, that poor woman certainly paid the penalty.

An article in *The West Australian* of 11 March reported that the driver of a Mini Cooper had been fined \$1 500 for speeding while driving the vehicle. His employer, Auto Classic, had unsuccessfully appealed the confiscation and had had to sit out the confiscation period before it could get the vehicle back. I imagine that that would have caused Auto Classic some distress if it was trying to move that car off the lot and receive payment for it. In another example, a multipurpose taxi had been impounded, causing difficulties for not only the owner of the taxi—not necessarily the driver—but also people who might need to access that disability taxi service.

I think there was a fourth example that received quite a bit of publicity. The minister responsible for this legislation initially seemed to brush off these things. It came down to public opinion putting the pressure on him to introduce this legislation to tighten up these grey areas. Perhaps if the government had spent more time doing the background work and looking at the drafting of the legislation before it introduced it in knee-jerk legislation in the name of "law and order" we would not have had to come back and apply bandaids to this type of legislation.

It was also interesting that, aside from the public commentary, in an interview on *Stateline* on Friday, 26 March, former District Court Chief Judge Kennedy made some very interesting comments about the government and Minister Johnson, in particular, and how he had handled the Lamborghini incident. The Chief Justice obviously had a number of comments to make about a series of situations in the state. I will read her comments from a transcript from that *Stateline* program —

JOANNA MENAGH: Her scathing criticism extends to the case of Patrick Nugawela —

Members can correct me; I am not sure of the pronunciation of the doctor's surname.

who had his Lamborghini seized after his mechanic was allegedly caught speeding in it.

ANTOINETTE KENNEDY: When the doctor had his Lamborghini seized, the relevant minister seemed to think that he could brush that aside by the politics of envy, that we would all simply envy the doctor that he had a Lamborghini and we didn't and so who cares about him? And it turned out the community did care. They did see that as being unfair and they did care about that act of unfairness to

that person, even though most of us couldn't afford a Lamborghini, and so I don't know who they're listening to, but I simply don't agree with them.

That is an interesting point. Although the incident involved that doctor and his Lamborghini, it could have been anyone who had his car seized. We must apply a fairness principle across the board. It was interesting that Chief Judge Kennedy picked that incident and made the comments about how the minister had handled it. Based on the commentary in the media, perhaps a bit of politics of envy was involved in the way the minister handled that situation. Perhaps he can receive counsel from wiser heads in his cabinet about how to engage in these issues and apply a fairness principle.

It is interesting that, in the period since that legislation was introduced last year, I have received some statistics, which I will share with the chamber so that members have a fairly clear idea of the number of cars that have been impounded, the number of hardship applications made and granted and a couple of other details. I will read from an email I received from one of the advisers. The total number of vehicles impounded for hoon offences since July 2009 is 1 483; for unauthorised driving offences since July 2009, 7 269; vehicles crushed or confiscated, two; and hardship applications, 506. I dare say the lady from Kalamunda was one of those. The total number of hardship applications granted is 109. That is quite a big difference. The total number of surrender notices issued for hoon offences is 56, and surrender notices issued for unauthorised driving offences, 150. Those are the current figures as at 20 April that were provided to me. They are very interesting figures.

On 6 April, an article in *The West Australian* was headed "117 unlicensed drivers lose cars" with reference to the Easter break, and 21 vehicles had been taken for hooning. Given all this media hype and criticism of the way the government handled those various issues and how that legislation was impacting on people who owned the cars, not necessarily driving them at the time they were caught, the government decided to change the legislation. An article in *The West Australian* of 21 April refers to how the government had decided to relax the impounding rules for business owners, contractors of a business owner, taxis driven by shift drivers and buses driven by employees or contractors of a bus licence holder. These are all the issues that were canvassed in the other place and the government was asked to tighten them further. I am keen to hear why we are dealing with not only this bill, but also further amendments that could have been dealt with in the other place to make this legislation workable.

I referred earlier to the cost to the police of managing the hoon legislation and the impounding of cars. Given the increase in the number of vehicles that the police have had to seize and impound, I refer to a article in *The Sunday Times* of 2 May, just last Sunday, headed "Car seizures deliver cops \$1.4m debt". The minister may have seen this article. I am sure everyone reads *The Sunday Times* here on PerthNow! The article reads —

Police have been lumbered with hundreds of unclaimed cars—and a \$1.4 million debt—because one in five vehicles seized from unlicensed drivers is not collected by their owner.

Hon Norman Moore interjected.

Hon KATE DOUST: I am sorry; I missed that interjection. I am sure it was humorous.

Hon Norman Moore: I just said that I read the comics, which is the most serious part of the newspaper!

Hon KATE DOUST: Yes, the comics and the fashion pages.

Hon Norman Moore: I don't read them.

Hon KATE DOUST: Perhaps you should.

Hon Norman Moore interjected.

Hon KATE DOUST: Perhaps I should too. I am always looking at those things.

That is the first part of the article. It then goes on to state —

... WA Police has forked out more than \$4.17 million in impounding costs and managed to recoup just \$2.76 million after auctioning unclaimed cars.

If my memory serves me correctly, we talked about this type of issue when we dealt with the legislation at the end of last year. We asked what would happen if people did not claim their cars because some of the cars would not have been worth the value of the fine or the cost of getting the car out of a compound. Obviously people are saying, "I will not pay the cost of getting it out; it is not of that much value to me", so they leave their car there and give the police a dilemma. WA Police has to find the extra money out of its budget, which, as we know, has been slashed due to the three per cent efficiency cuts and other issues. My question is: what will happen about that shortfall? Is the government going to provide that additional money to the police so the police can manage their books? I understand from this article also that Commissioner Karl O'Callaghan will consider approaching the state government for extra funding.

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Apparently some analysis is being done of the impacts of the legislation after the first year of operation. That will probably not happen. I imagine that is the first year of operation of the legislation we dealt with last year, not the bill we are currently dealing with. By the end of this year I imagine the commissioner will go cap in hand to the government saying that the police budget has a shortfall, and that it will probably grow by the end of this year. I will be interested to know how the government will deal with that. Will it allocate additional funding to WA Police to manage these additional costs of impounded cars not being collected? Further in the article, interestingly, it states —

... the entire car park of the Karratha police station was recently crammed with seized cars.

WA Police are faced with the problem not only of people not picking up their cars, but also of what to do with them all. Only two cars have been crushed because of the penalty that was required to be carried out. What are the police going to do with all these surplus cars that are just lying around in car yards? Will the police sell them off or crush them? How will they manage them? What sort of thought has been given or what sort of discussions have been held —

Hon Peter Collier: Give them to the TAFEs.

Hon KATE DOUST: That might not be as silly as the minister said.

Hon Peter Collier: I have suggested that.

Hon KATE DOUST: I fully support creative options for dealing with this issue. However, I would like to know from the minister, rather than just that throwaway line, what discussions have been held between the —

Hon Peter Collier: I have had a discussion with the minister with regard to this issue.

Hon KATE DOUST: Has the minister had that discussion in his portfolio of training?

Hon Peter Collier: I think it is a really good idea with these cars, if possible, to actually use them for practical purposes by our state training providers.

Hon KATE DOUST: Okay.

Hon Giz Watson: A practical example of how to get your car to go really fast!

Hon KATE DOUST: But not to get busted while they are doing it!

It is very good that the minister has done that and it is very interesting. I would be keen to know how the government has engaged more broadly with the police on this issue. We certainly do not want to see police yards around the state getting filled up with cars that have been impounded and owners not prepared to pay for them or to collect them. I think that is an interesting point that has arisen out this legislation.

I note that in response to a question asked in the other place on 22 April about the additional costs that the police have incurred and how they would be managed, Minister Johnson said that the government was currently looking at a new system that would be put in place. Some new tender had been asked for to try to ensure that the police would not have to pay those costs. I would be interested if the minister could provide to this chamber some information about which new arrangements will be put in place so that the police will not have to pay the costs that they are currently incurring with impounded cars.

Those are just some issues that have arisen. As I said earlier, this legislation is an example of having to patch up earlier legislation that probably did not have enough thought given to it. It was certainly a good example of when government was not prepared to listen to alternative proposals that probably would have resolved some of the problems that have arisen, certainly in the public's mind. Some of the proposals that came from Labor in the other place would have provided probably more clarity about when and where cars could be seized and from whom. If they had been implemented, we may not have seen some of those situations that the government had to deal with in the earlier months of this year.

Another aspect I would like to know from the minister is what research the government has engaged in about the impacts of this legislation on how the community deals with road safety. Has any work been done about whether seizing people's cars and having them pay penalties actually makes people think more carefully about what they do when they get in their car and turn on their motor and how they conduct themselves on the roads? I would be interested to know whether the government has done any research on that or whether it is planning to do any research; and what having the public images of those cars being seized and in some cases crushed does to individuals' thinking about how they conduct themselves on our roads. The second reading speech made a reference to this legislation that —

... it upholds the fundamental right of the community to feel safe while on the roads, ...

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I want to know how this legislation actually delivers on that. What research has been done by the government to clarify that statement? How will it make people feel safe on the roads?

Those are some of the concerns. As I said, it is a bandaid approach. It is fixing deficient legislation. We told the government it was deficient legislation. We told the government there would be problems. Those problems did occur. The public has given the government a fair belting because of the way it managed those grey areas. The government has responded to the public criticism, as I imagine it will respond in due course to public criticism on other legislation that we will deal with in future. It is just a real shame that Minister Johnson, in his great rush to get legislation through the Parliament swiftly, did not put some real work into it to make sure it was good and workable legislation that provides for fairness and equity for everybody in the community and does not need to be changed within a couple of months.

I hope also that the minister is able to provide some information on the couple of questions I have asked. I look forward to the minister's explanation of why the additional quite substantial amendments on the supplementary notice paper were added to this bill for consideration after the bill was read in and why the government could not have dealt with the proposed changes in the other place, given that they are very similar to the principles raised by the opposition and the areas of concern that we wanted amended.

I look forward to the minister's response. The opposition will be supporting this legislation and the amendments that the bill is proposing, as we believe that they go some way to addressing the loopholes and grey areas that have been shown to have arisen in the poorly constructed bill that the government previously introduced. It is interesting that the minister responsible, not Minister Collier, is showing a pattern of behaviour—which I think are words we might use frequently in future—about his ad hoc approach to putting forward good, workable legislation. In conclusion, with those few brief words about this bill, we will support it and we look forward to the minister's explanation of those matters that we have raised.

HON GIZ WATSON (North Metropolitan) [12.36 pm]: I have been looking forward to speaking on this bill; one in which I have taken a fair degree of interest. I must give full credit to my research officer, Irma Lachmund, who has had her eye on this particular bill ever since the introduction of its predecessor, which was the fundamentally flawed legislation that the government put through earlier. We are now dealing with the catch-up legislation, which is the Road Traffic Amendment Bill 2010 that we have before us this afternoon. This Road Traffic Amendment Bill is the government's next attempt to fix up fundamental flaws in the so-called implementation of hoon offences that members will recall, of course, was rushed through the Parliament in September 2009. This bill attempts to do two things. It allows the police to order the offender to substitute another vehicle in a case in which the vehicle used at the time of the offence is not licensed to the offender; and it recognises the interests of hire service companies and car sales businesses.

It is an extraordinary set of circumstances that has led us to debate this bill in the Legislative Council today. Members may recall in the history of this legislation that when the Labor Party was in government, it introduced the basic framework for confiscation of vehicles that were used in so-called hoon offences. We had some reservations about that legislation at the time, but I do not believe we actually voted against it. That original legislation had a very short period of impoundment. I suggest to members that this bill came about after a very short, sharp election campaign during which the Liberal Party proposed a number of law and order initiatives—I am pretty sure this was one of them—to be tough on crime. One of the initiatives was to extend, or crank up, the provisions to impound vehicles. Let me be very clear: the Greens have absolutely no problem with measures to prevent people engaging in dangerous driving. The trouble is that when we go down that track, we run into some problems regarding people's private property, which is exactly what we are trying to fix up now, again, because there are some conflicting rights and principles. Therefore, it is not an easy area in which to legislate. That is why we are wasting a hell of a lot of the Parliament's time in apparently trying to get this right. I suggest that we need to be looking at other ways of preventing particularly young men from wanting to behave stupidly on the roads. Legislative instruments are often really problematic, because there are conflicting rights and obligations, and it is very hard to achieve some of these things in legislation. I think that is what we are dealing with.

I reiterate what Hon Kate Doust has said. Not only do we have another bill, but also we now have placed, at reasonably recent notice, on supplementary notice paper 2A, 17 more government amendments to what is in fact a very small bill. This supplementary notice paper contains nine A4 pages of further amendments, which I am delighted to see we will have the opportunity to debate as well, on top of the three amendments that I had placed on the supplementary notice paper on behalf of the Greens. We are really dealing with a dog's breakfast. There is no polite way to put it. What that says to me is that there is a huge danger in any major political party making an election promise and not really thinking through how it will do it. Perhaps it would have been a good idea to have thought a bit more about the original piece of legislation rather than rushing it through in September. We have heard about the consequences. We have heard that it has had unintended consequences by impinging on the fundamental property rights of innocent third parties. In a nutshell, that is the problem. It has received a lot of

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public debate, and people are rightly angry and confused and cannot quite understand how they ended up with legislation that looks as bad as this.

It is very easy to say, “Well, it was all the police minister’s idea”, and perhaps it primarily was. I guess he probably has to carry the brunt of the criticism for introducing ill-considered legislation. However, we must remember that the process, I assume, is that cabinet signs off on legislation, and I assume our colleagues, the enablers over there in the National Party, also sign off on this sort of legislation. I want to make the point that it is not just the police minister who put up a bill like this; it is the government, and the government includes all those guys over there, and the occasional woman. Therefore, I am just making that point. Members opposite might like to suggest that perhaps it is the police minister who is lacking in capacity, but I suggest that it is something that needs to be carried by all those opposite. They might like to think a bit more carefully about what they introduce before they do so again.

Secondly, I reiterate the point that Hon Kate Doust made. Here we have a bill in our place, which we are about to debate in detail, with a further nine pages of amendments, 17 of which belong to the government, and we do not even have the minister in this place. No offence to Hon Peter Collier, because I am sure he will do as best as he can, but it seems extraordinary that we are now going to deal with a further 17 amendments without the minister in our place to explain what they are trying to do. My temptation would be to say, “Take them back to the Assembly and ask the minister to explain to the Assembly what these amendments do.” I have some very simple amendments, which we will get to, no doubt, in due course, that would have resolved this issue with some simple elegance. But perhaps that is not the way that this government likes to do things.

This bill makes very specific rules for the case of contractual use of cars owned by third parties, such as hire cars, and the use of cars during service test drives or for sale purposes. We have no problem with the attempts to adjust that particular component. These provisions claim to address the special needs of businesses and individuals who use service providers and who risk the commission of a hoon offence or driving without a licence during the process of a car sale or during a service check. We do not have a problem with that. This is a good start, but it does not go far enough. It has been the result of significant injustices that have come up during the first eight months of the implementation of this increased impounding period. Fundamentally, as I said, we are dealing with legislation that I am sure has been very difficult to draft. I am sure that the people who were tasked with drafting this legislation must have had some headaches to try to work out how they could actually do it, because it does not matter which way we look at it, it is very tricky. That is the fundamental problem that we have had, and we have said that all along. I must say that I have to make a little comment that it is the first time that I have seen a senior journalist suggest in our esteemed daily newspaper that the Greens got it right on something such as property rights and driving offences and that perhaps I needed to be elevated to the position of police minister. I do not have that ambition, so members can all relax. I am not putting my hand up.

Whereas this is the next attempt, we would argue that a good bill should have acknowledged the significant injustice in the impounding of a vehicle that is owned by an innocent third party, and that the bill should provide options for immediate release of that third party vehicle in those circumstances. The bill should also have given back the discretion to police officers regarding the need to impound any specific vehicle. That is actually where the law was before; the discretion was substantially with the police officer. Various changes that have taken place have resulted in that discretion being removed. The bill should have reflected the interests of business owners who are unable to use their vehicle because one of their employees has driven it illegally. They can get rid of the employee, but they cannot get their vehicle back, and it is for a considerable time, especially if it is a second offence for the offender.

The bill could also have increased discretion regarding the recognition of hardship in unusual cases, and I will deal with that in more detail when we go into committee. Hon Kate Doust raised the case of the hospital worker from Forrestfield. That is clearly an unjust outcome that needs to be fixed. Cases of hardship need to be recognised, and there was an elegantly simple way of doing that, which I will get to in a minute.

I would particularly like to thank the Department of Planning for the excellent briefing and advice and additional information that has been provided in the past few weeks, because the department is certainly doing everything it can to keep members of Parliament abreast of this evolving matter—almost on an hourly basis.

Basically, impounding a vehicle that belongs to an innocent third party is fundamentally unjust. We find that the provisions in this bill are both cumbersome and difficult for the average person to even comprehend. The bill does not provide the discretion that a police officer needs to address cases. In our view, it is not in the public interest to remove that discretion from a police officer.

The impounding of a vehicle has a significant impact on the offender and on the family social network of the offender that relies on the use of the vehicle. Of course, this is even more so when the impounding bears on an

innocent third party. We believe that direct penalties for the offending driver should be sufficient to motivate him or her to improve his or her driving to make it legal. We have seen no evidence from WA that demonstrates that impounding vehicles has been an efficient measure to improve road safety. However, perhaps the minister may be able to indicate whether there are any signs that things have improved in this regard. For the Parliament to continue cranking these offences up higher, when we had not even had time to assess the effectiveness of the measures that were put in place, for example, by the previous government, which had a more modest impounding period, was ill-advised at the very least. Rushing into these things leads to the sorts of problems that we have now.

Impounding a vehicle, in addition to a penalty payable for the offence, appears to breach the principle of double jeopardy, whereby an offender should not be punished twice for the same offence. I might just remind members what that principle is. The New South Wales Council for Civil Liberties states that it is as follows —

The rule against double jeopardy states that no one should be tried or punished twice for the same offence. This rule protects citizens from oppression by ensuring that the State cannot keep prosecuting a citizen until they are finally convicted. It is a fundamental ...

It goes back a long way in law. One could argue that impounding a vehicle on the day of the offence, average fees of around \$900 for the return of the vehicle after 28 days for a first offence and a penalty set by the court sometime later for driving without a licence or hooning are three different penalties. Although they are linked, they have very different impacts on the driver and his or her family or an innocent third party, such as significant personal inconvenience and severe financial impact.

I want now to alert members to some of the concerns that other organisations have raised with regard to this particular area of law. I want to provide members with the opinion of the Law Society of Western Australia. It raised these concerns with the Minister for Police in a submission dated March 2010, entitled “Submission: ROAD TRAFFIC AMENDMENT BILL 2010 (“HOON LEGISLATION”)”. The Law Society has kindly provided me with a copy of its submission. I am saying not to take anything from us, but some serious legal minds have also considered the implications of this type of legislation. The submission states —

The Law Society of Western Australia is opposed to the amending legislation because it does not go far enough in protecting the rights of innocent vehicle owners.

This is the bill that we are dealing with today. It continues —

Recent well publicised cases have highlighted the Society’s concerns with the police powers set out in Division 4 of the *Road Traffic Act 1974* ... *The Road Traffic Amendment Bill 2010* ... does not address these concerns.

The police power to impound vehicles in Division 4 of the Act is totally inconsistent with the presumption of innocence. Further, in those cases where an offending driver is guilty, inconsistencies in effective penalty will arise where those offenders who own motor vehicles may be punished more than those who do not.

The various amendments to the Act, which have increased the length of impounding periods and the categories of impounding offences, have increased the potential unfairness of the impounding regime. Recent cases have highlighted the Society’s concerns that the test of “exceptional hardship” which applies under Section 79D(2)(c) of the Act is too strict to assist innocent third parties who own impounding motor vehicles. The Bill does not adequately amend this section. At minimum the word “exceptional” should be deleted —

That is the simple, elegant solution to the unfairness that resides in the existing legislation and that is not addressed by this bill. It continues —

which would then allow police a wider discretion to release impounded vehicles.

The Bill provides new statutory criteria affording innocent vehicle owners some protection where offending drivers are given notice by police to surrender a “substitute vehicle”.

The Society’s concerns with the substitute vehicle process are as follows:

- (i) Whether such application is made is totally at the discretion of the police and not the innocent vehicle owner;
- (ii) The provisions will only benefit the innocent vehicle owner of an impounded vehicle if the alleged offender meets the criteria of owning a “substitute vehicle”;

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- (iii) The police have absolute discretion as to which vehicle must be surrendered as a substitute vehicle if the alleged offender owns two or more motor vehicles; and
- (iv) Nothing in the Bill indicates what the police position will be if an alleged offender does not have a substitute vehicle available for impounding and an innocent third party's vehicle is impounded by police.

It seems that that is a very unjust way to deal with it. A person who has only one vehicle will be in one position, but with a person who has three vehicles—they might be three cheap ones or three expensive ones—the police can say that they will have one but not the other. It is a dog's breakfast, to be quite frank. It continues —

In the Society's view, impoundment of vehicles owned by innocent third parties is wrong in principle and the Act should be amended to remove such vehicles from the scheme. Further, impoundment of offender owned vehicles should never be for more than 48 hours without an application by police to the court for an order.

There has been this creeping effect with a piece of legislation that was structured in a certain way to have a short, sharp penalty, which was I think what the previous government had in mind. I think the public can generally agree with the overnight or two-day impounding penalty, which is the short, sharp shock principle. However, when a vehicle is impounded for longer than that, I think that it is a substantially bigger penalty, and we are also of the view that a court order should be applied for; it should not be at the discretion of the police. We will get on to the detail of proposed amendments a bit later. The submission continues —

In the Society's view, the confiscation of vehicles owned by innocent third parties is wrong in principle. The Act should be amended to remove the potential for such vehicles to be confiscated. At the very least the legislation should provide to innocent third parties a simple and immediate mechanism to review the refusal of the police to release a vehicle by application to a Magistrate for an order for the release of their vehicle.

That means that a court can make an assessment of the hardship. This is the sort of thing we do in other cases. It is a significant penalty, and it should be reviewed by, at the very least, a Magistrates Court to be able to assess all sides of the argument. The submission continues —

Further, confiscation of offender owned vehicles should never be for more than 48 hours without an application by the Commissioner of Police to a Magistrate for an order extending that time. The Society notes that by s80FA and s80G the Act already permits court orders for confiscation on an application by the Commissioner. Expanding that mechanism in appropriate circumstances would be a more proportionate response than simply extending confiscation periods. At the time of the application to extend the period of the confiscation or after 48 hours there should be a simple and immediate mechanism to review the refusal of the police to release a vehicle by application to a Magistrate for an order releasing the vehicle with or without a condition as to the payment of a fine (if the offence is admitted) or a bond for the period while the offence is investigated and prosecuted where the vehicle is required for employment or business activities of the alleged offender.

That is signed by the President of the Law Society, Mr Hylton Quail. The government has been offered some assistance on how to draft some solutions to this legislation, but I am not convinced that what we have in front of us by way of this bill and the further proposed amendments actually achieve what could have been done with a fairly elegant bit of drafting.

I will not go into detail, because it is probably just to alert members to the fact that there is a substantial amount of information on the Legal Aid Western Australia website, which deals with the complexities around fees that are due to the impounding of vehicles, especially when additional costs occur through the impounding of a substitute vehicle compared with the severity of the penalty for the offence. It goes into this in some detail. It is interesting to note that an offender is not only hit twice for this offence, but also hit twice very hard. Section 78A of the act particularly mentions that penalties for an offence are not affected by the impounding of the vehicle, so I guess there is no reducing of one penalty because the offender will also have his or her vehicle impounded.

The Greens (WA) have always been cool towards any legislation that has mandatory provisions. They really do need to be used in very limited circumstances. Again, it is the fact that the impounding of vehicles is mandatory, which took away the discretion of the police and made it impossible for any consideration of each circumstance to be considered. That is the problem with mandatory legislation; it removes the discretion and does not allow either a police officer or the court to say that there is on the one hand this and on the other hand that, and then to come to a considered view. The mandatory provisions will now receive specific exemptions, but section 79(1) of the Road Traffic Act 1974 remains unchanged. It gives a police officer a mandatory duty to impound a vehicle. It reads —

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If a member of the Police Force reasonably suspects that, while driving a vehicle, the driver has committed an impounding offence (driving), the member must, unless in the circumstances it is impracticable to do so, impound the vehicle within a period of 28 days after the day of the offence.

Sitting suspended from 1.00 to 2.00 pm

HON GIZ WATSON (North Metropolitan) [2.02 pm]: Before we broke for lunch, I was discussing the problems around mandatory provisions in any legislation, but specifically in this legislation. We are not sure why the Minister for Police is now pushing for exemptions in the terms described in this bill; they are highly codified, very difficult to understand and will probably require police officers to undertake additional training in order to be able to implement them. An offender has neither the right to be heard nor an opportunity to appeal a substitution order, and the Greens (WA) argue that an offender should have the right to substitute a vehicle and nominate which of his or her vehicles should be impounded, if he or she owns more than one. I acknowledge that in the briefing we were provided, we were assured that the order would not be made without consultation with the offender, but that is not what the legislation actually provides. It is evidently optional and is not prescribed within the legislation. The Greens (WA) argue that, in all cases, the penalty should be proportionate to the offence. Impounding a car owned by an innocent third party does not injure the driver, only the car owner.

It is interesting that the Greens should be reminding members about property rights! Property is theft, in my view, but that is another particular political philosophy!

Hon Ken Travers: Unreconstructed socialist!

Hon GIZ WATSON: That is right!

Hon Ken Travers: Marxist, in fact!

Hon GIZ WATSON: Marxist, indeed!

The Universal Declaration of Human Rights is clear in its provision in respect of the protection of property. Article 17 states —

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

This legislation might be open to a challenge under that particular provision.

Similarly, the Fifth Amendment of the United States Constitution states —

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;

There are therefore international legal provisions or views about people being arbitrarily deprived of their property. We do not have a bill of rights or a human rights charter in Australia or Western Australia, so those sorts of provisions are not enshrined in our legislation; perhaps they should be. However, until we have a charter of rights, this issue about the right to own property is not recognised at law. However, it could be argued that the impounding of a vehicle owned by a third person is contrary to section 51(xxxi) of the Australian Constitution, which states —

the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws;

Impounding a vehicle is not acquisition in the constitutional sense, but it has the same significant short-term effect of depriving the owner of a vehicle of his property. The Legislative Council is not the right place to argue such implied rights and protections for property owners, but I am sure that both Liberal Party and National Party members would consider the protection of property to be something they hold dear to their hearts.

The Law Society of Western Australia regards this penalty to be wrong in principle, and requests an immediate mechanism for review by the Magistrates Court of refusals by the police to release a vehicle. Appeals rights exist in legislation in other states, such as in New South Wales where appeals are made to a Local Court, and Victoria, where appeals are made to the Magistrates' Court. In New Zealand, the model laws were mirrored when impounding was first introduced; there is a right to appeal a decision made by an enforcement officer to a District Court. Such right of appeal does not exist in Western Australia; if we do not like what the police decide, there is no avenue for appeal.

I want to talk about the specific provisions for hire cars and care while servicing. This appears to be another inadequate response to try to cover the potential for a penalty to apply to an innocent third party. The provisions appear cumbersome and convoluted, and it is likely that another such case will arise soon. I will talk about this in more detail when we get to the further amendments I am sure the minister will introduce when we get to the committee stage. Clause 10 amends section 79D to prepare for and address situations such as hire cars, for example. It will allow additional cases to be dealt with outside community and media attention and for further exemptions to be made by regulation. This is a clever way to prevent scrutiny and to cover up inadequate drafting. Again, the Greens (WA) have said many times in this place that simply doing things on the run and saying that things will be fixed up and the details dealt with through regulations is something that the Parliament needs to be very mindful of minimising, if not excluding.

I also want to talk about the issue of impounding a substitute vehicle, which raises a lot of other questions. Are offenders to be punished differently depending on whether they own a vehicle? How does that compare with the principle of equality before the law? Does this mean that because an offender does not own a vehicle, an innocent third party is the correct target of the penalty and has to bear the brunt of the law? How can that, in fact, be just and fair? What other jurisdiction has a similar provision? I understand that in Victoria, the substitution of a vehicle to be impounded requires a decision by the court; it is not for the police simply to go to the garage and pick out the car they like. Under a provision in the comparable Victorian legislation, the Victorian police may ask the court to substitute the vehicle for one registered to the offender. What happens if the offender does not own a car and a business vehicle has been impounded in the first place? Does the minister think that the interests of the owners of a business vehicle that has been impounded will be adequately taken into consideration? I guess it begs the question: what consultation was undertaken by the minister or the department before drafting this further attempt to amend a deeply flawed piece of legislation? From the briefing I received, I understand that no consultation occurred before the bill was introduced because it was considered to be more of a technical nature. I have already read out what the Law Society thinks about that. I am interested to know whether the minister formally responded to the Law Society's submission; and, if so, what he said.

I think that will probably do for my second reading debate contribution. I will obviously have some more questions to raise and matters to discuss when we get to the detail of the bill at the committee stage. Therefore, to summarise, the Greens (WA) oppose this bill because, firstly, it does not provide adequate discretion for police officers when impounding vehicles. Secondly, the provisions are narrow and cumbersome and fail to address the interests of innocent third party car owners affected by the impounding of their vehicle. Thirdly, the legislation does not contain any appeal provisions. For those reasons there is absolutely no way that we can support the bill.

HON COL HOLT (South West) [2.11 pm]: I will take a few moments to say that I support the Road Traffic Amendment Bill 2010. Obviously, some changes need to be made to the original legislation given the unforeseen circumstances that have played out publicly in the media with the cases of the doctor who lost his Lamborghini and the Mini Cooper that went for a bit of a spin.

Hon Giz Watson: I hope you are taking this matter seriously.

Hon COL HOLT: I am. Obviously, there is a real need to ensure that from now on it is very clear to the community what the penalties are and where this legislation fits into the spectrum of trying to address hoon behaviour. As we follow the movable feast of amendments that are already in the bill and the nine pages of amendments that are lined up for the committee stage, hopefully we will finally get to the point at which the meaning of this legislation is very clear to everybody in the community. I look forward to an outcome whereby all amendments are duly made to the legislation so that there are no more loopholes or problems with it so that hopefully in the future we will not find ourselves in this place debating and discussing it yet again.

HON MAX TRENORDEN (Agricultural) [2.13 pm]: I was uncomfortable with this legislation when it passed through both chambers some years ago and I have to say that I remain uncomfortable with several areas of this legislation. There is one key aspect of the Road Traffic Amendment Bill 2010 that I do not like and I do not appreciate—I do appreciate the briefings from the good people who are currently behind your chair, Mr Deputy President—and I will try to put that to members in this place who are prepared to listen at the moment and we will see what happens after that.

I am very concerned about the question of police discretion. Whatever we do, whatever the set of circumstances, when someone is apprehended now and is about to face the wrath of this legislation, there is a delay factor. I am told that it will be at least 48 hours before individuals who can prove the right to keep their vehicle will get their vehicle back. It will be 48 hours before that vehicle is back in the small business fleet or the Telstra fleet or wherever that vehicle came from because an employee was driving that vehicle when it was impounded.

These days—we have only to see it as we drive down the highway and no-one will dispute this—a police car is basically a moving information technology unit. All information is available to a police officer by computer,

radio and telephone. A whole raft of information is available to a police officer when a situation occurs. I suggest that discretion would have been a very useful part of this legislation. If a police officer could clearly ascertain who the individual that committed the offence is, who owns the vehicle and the range of circumstances around those individuals, that officer could have been comfortable to allow that person and the car to go home and to deal with the matter later. After all, if an officer knows who the offender is and is comfortable with that, and knows who owns the vehicle and is comfortable with that, why not let the world go on? If the police know who they can pursue to get justice, justice will still occur. Therefore, in some of these cases we could allow for police discretion, as we do in the majority of other cases. I am jumping all over the place, but a police officer's discretion is a core process of policing. We give officers discretion because we train them and they have their own life experience to be able to front circumstances and make decisions on the spot as to whether people will be prosecuted or alternative actions will occur. Why do we not do that with hoon offences? When it is clearly a company vehicle and the individual driving is an employee and the officer has clearly identified that individual, why take the car away? The police know who to go to, they know where the car is going to be, they know where the individual will be and all the other provisions of the act can still follow. If discretion were permitted, what would happen is that, whether it was Telstra or the local butcher, the business would have that vehicle available to them for work the next morning, which is a basic requirement. After all, it is not the employer who has broken the law; it is the employee or whomever.

I think it is reasonable when employing someone to ask whether they have a licence and all that, but the reality of life is that if some young fellow has been pinged for some event over the weekend, will he always tell the boss on Monday morning? Those sorts of circumstances, as we all know from our own life experience, happen on a fairly regular basis. My concern is that we have put a large slice of bureaucracy and red tape in front of business operators which, in my view, is not warranted. As I have said, I have had the briefings and the discussions and I still do not understand why we take away the police officer's discretion at the time of arrest. Nearly every police officer—when there is any doubt at all as to the circumstances—would proceed down the normal course of action and take possession of the car and lay the charges and the like. However, when an officer knows the circumstances, we could save individuals who are innocent in this process from a great deal of pain. I do not like that aspect of the legislation at all, I have to say.

Another irritation of mine—it probably is not a reasonable argument but I am going to make it anyway—that worries me is in country towns when construction happens during the course of the week. When the construction ceases on the weekend, road signage for reduced speeds remain on the road. We have many cases in regional areas whereby mothers and parents in general will go in and out of the town on a regular basis to go shopping, take the kids to sport, go to their own sport events or whatever, up to half a dozen times a day. They know that no-one is working on the site. When a 60-kilometre-an-hour speed zone is put up to protect the workers, but the workers are not there and a driver travels at 80 or 90 kilometres an hour or whatever the speed is, that makes the driver a hoon and the driver gets pinged; he will be penalised at the top end of the scale. I am not saying that those drivers should not be penalised for breaking the law; I am saying that they go straight to the top end of the penalty scale. If a person breaks the law, that person should be penalised for it. However, if a person is driving on a road with a 60-kilometre-an-hour speed limit and the driver is caught driving at a speed that makes him a hoon, why would the driver not be penalised two demerit points and fined \$250 instead of having his car confiscated? The only weakness of my argument—there might be a few more!—is that the person is breaking the law and there is no excuse for breaking the law, which I accept. All I am saying is that those people are getting penalised at the top end of the scale and the other penalties that would normally be in place do not apply.

I do not expect to hear too much from the minister but I express my very strong disappointment that police discretion was not left in the bill. I believe we will regret that at some stage. In the vast majority of cases the provisions of this bill would have still rolled on, and if the police officer had any doubt at all about the circumstances of the case, the provisions of the bill still would have rolled on. To repeat myself, when an officer knows all the circumstances and has a great deal of information available at his fingertips, why would we take away that discretion? Why would we put an innocent party in pain for at least 48 hours and build a bureaucracy under which people have to sign papers and turn up to a lot of locations just to get back impounded vehicles the confiscation of which they had no part in? Not happy, Jan.

HON PETER COLLIER (North Metropolitan — Minister for Energy) [2.22 pm] — in reply: I thank members for their contribution to and general support of the Road Traffic Amendment Bill. I appreciate that the Greens (WA) will not be supporting the bill and I will talk about a few of the issues that they have raised. We will also deal with them much more forensically in committee. I will respond to a few issues that were raised by several members. This bill has captured the imagination of the community at large and has been in the public arena for the past 12 months in particular. It is only appropriate to go through this bill in a much more comprehensive fashion. I will respond to the issues of the regulations in a general sense because they were raised by several members.

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Hon Kate Doust asked whether the window of opportunity for giving the surrender substitute vehicle notice was 28 days. Proposed section 79BCA(3) states —

The surrender substitute vehicle notice cannot be given after 28 days after the date of the release of the initially impounded vehicle.

Surrender substitute vehicle notices may be given when the vehicle used in the commission of an alleged offence is impounded but released because of proposed section 79D.

Hon Kate Doust: Does the notice have to be given from the date when the original vehicle was impounded?

Hon PETER COLLIER: That is correct. That is the advice I have received. The member might like to revisit that in committee. Hon Kate Doust referred to the financial shortfall. The offender is liable to pay all costs incurred by the commissioner relating to the impounding of the vehicle under proposed section 79E.

Hon Kate Doust: Does that get picked up by the \$1.4 million shortfall? Will the offenders be targeted to recoup that money?

Hon PETER COLLIER: We will deal with that issue in committee. Hon Giz Watson asked a question about the early release and surrender. The police will not be able to give a surrender substitute vehicle notice unless the vehicle used in the commission of the alleged offence has been released early because the circumstances in proposed section 79D apply. The vehicle used in the commission of the alleged offence will be released if section 79D applies, regardless of whether the alleged offender has a vehicle or vehicles. Hon Giz Watson asked a specific question in response to the letter —

Hon Giz Watson: Is that the submission from the Law Society?

Hon PETER COLLIER: That is correct. I am unsure whether the minister has responded to that. With regard to discretion, which Hon Max Trenorden raised, it has been suggested that the early release of a vehicle is not necessary if the police have the discretion to not impound a vehicle, but the matters that need to be established to enable early release cannot be readily established at the roadside; for example, measures to ensure that the offender was licensed. That issue requires more assessment and I would like to deal with that during the committee stage, so I ask the member to raise that matter again during the committee stage. I thank Hon Col Holt for indicating that he will support the bill.

I will go through a few general issues of the bill before we go into committee. Members are well aware of the history of the bill, which was prepared as a high priority to provide a prompt response to recent circumstances with which we are all familiar and which have been raised in this chamber on a number of occasions. Certain vehicles were impounded and, under the circumstances, it was considered appropriate to release those vehicles prior to the end of the impounding period. As we all know, the legislation as it stands did not permit the early release of those vehicles. As I said, the issue was in the public arena for several weeks and it was evident that we needed to change the legislation. When the bill was being drafted, the government acknowledged that there would be a need to provide for the early release of impounded vehicles in some circumstances other than those that were established within the bill. In order to introduce the amendments contained in this bill as matter of priority, while retaining the ability to cater for these other circumstances, the bill includes the power to make regulations, prescribing further circumstances in which the Commissioner of Police can release an impounded vehicle prior to the end of the applicable impounding period. It was always intended that this power would be used soon after the provisions of the bill came into operation once the proper assessment of potential circumstances could be completed. I appreciate that that will not satisfy Hon Giz Watson and I am sure that we can further extend on that in the committee stage.

There is some validity to the point raised during the bill's passage that no member who represents a minister in the other place likes the notion of having 10 pages of amendments to a bill.

Hon Giz Watson: It is only nine!

Hon PETER COLLIER: I stand corrected. I acknowledge the comments made by Hon Kate Doust that the opposition raised a number of proposed amendments in the other place that were aimed at dealing with some of the early-release circumstances which the opposition had identified and which have pretty much come to fruition. At the time, those amendments were not acceptable in the draft in which they were presented. However, the minister in the other place saw merit in what those amendments were trying to achieve. Therefore, in the spirit of cooperation, rather than await the bill's passage and make use of the regulation-making power referred to, the Minister for Police committed to drafting the amendments members see standing in my name on the supplementary notice paper. Other amendments flow naturally from those and will ensure that the legislation is consistent.

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I will briefly summarise the key matters contained in the government's amendments. Firstly, they will add further circumstances in which the Commissioner of Police can release an impounded vehicle before the end of the impounding period. That issue was raised in the other place. Secondly, the amendments will enable the cancellation of a notice that has been given requiring the surrender of a vehicle for impounding. There are only two instances in which such a notice may be cancelled. The first instance is when a vehicle would be eligible for early release if it were impounded. It is obvious that no purpose would be served in proceeding to impound the vehicle in those circumstances.

The second and final instance is when the condition of the vehicle has been so significantly altered—for example, it has been involved in a serious motor vehicle accident—that it no longer functions as a vehicle. Once again, it is obvious that no purpose would be served in impounding the vehicle as no-one would suffer any ill consequence in relation to its impoundment.

Thirdly and finally, the government amendments will empower a member of the police force to give an alleged offender a surrender alternative vehicle notice. If a notice requiring the surrender of a vehicle for impounding has been cancelled in the manner I have just described, and the alleged offender is the responsible person of one or more other vehicles, this power is in keeping with the proposed power already contained in the bill to give an alleged offender a surrender substitute vehicle notice if the Commissioner of Police has released early a vehicle impounded in connection with an impounding offence and the alleged offender is the responsible person for one or more other vehicles. That deals with the government amendments.

Two amendments from Hon Giz Watson are on the supplementary notice paper. Did she say that she had three amendments?

Hon Giz Watson: I thought I had three.

Hon Kate Doust: There are only two on the supplementary notice paper.

Hon Giz Watson: Okay. I get confused between bills. I am sure there are two.

Hon PETER COLLIER: That is fine; I thought there might have been another one, but there are two amendments.

Hon Giz Watson: Yes; two is more than enough!

Hon PETER COLLIER: Hon Giz Watson has tabled two proposed amendments. The government will not be supporting those amendments. The government feels that the amendments would lower the bar too much and would in fact detract from the spirit of the legislation. Again, we can perhaps dissect that a little further at the committee stage.

Hon Kate Doust: What is the actual spirit of the legislation?

Hon PETER COLLIER: Probably to ensure that, as far as hooning is concerned, the bill is appropriate and fair. I think this bill ensures that it will occur in a more equitable fashion.

Hon Kate Doust: That's what we hope.

Hon PETER COLLIER: Having said that, I thank members once again for their contribution and their general support for the bill. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon Matt Benson-Lidholm) in the chair; Hon Peter Collier (Minister for Energy) in charge of the bill.

The CHAIRMAN: Members, there is one small issue inasmuch as the substantive amendments on the supplementary notice paper appear to be to clause 6. If the chamber is in agreement with that clause going ahead, then the amendments to clause 4 can go straight after. If the chamber is in agreement with the amendments to the substantive clause, clause 6, and they are accepted, we can go back to the amendments at the start of the supplementary notice paper. However, if the chamber is not in agreement with the amendments to clause 6, there would be an issue.

Hon GIZ WATSON: Thank you, Mr Chairman, for that clarification. I think what I am hearing is that clauses 4 and 5 are consequential on clause 6.

The CHAIRMAN: They are.

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Hon GIZ WATSON: Therefore, it makes sense to deal with clause 6 first.

The CHAIRMAN: Yes.

Hon GIZ WATSON: In that case, that is a very good idea.

Hon KATE DOUST: I agree with Hon Giz Watson. I have only a couple of questions on clause 6 anyway, but the opposition will support the clause. I just wanted some clarification, so I am happy to proceed.

Clause 1: Short title —

Hon KATE DOUST: There are a couple of matters that I raised during the second reading debate. The minister touched briefly on a couple of them and said that we would cover them in committee. I am not too sure, because the matters are general, during which clause to debate them, so I thought I would start them in clause 1.

I want to go back to and get some clarification on a couple of areas. I might do them separately, if that is all right, because they are quite distinct issues. The first matter is research. What research has been done by the government concerning the impact of this legislation to demonstrate that it will actually change driver behaviour? That is my first question.

Hon PETER COLLIER: The main stimulus for the amendments in 2009 was a significant increase in repeat offending. That was the main motivating factor for the legislation. Since 1 July 2009, as a result of the Australian Labor Party's unauthorised driving legislation, there has been a significant decrease in unauthorised driving since that period.

Hon Kate Doust: Could you just run that last part by me again?

Hon PETER COLLIER: Since 1 July 2009, as a result of the ALP's unauthorised driving legislation, there has been a decrease in unauthorised driving.

I have some more information that I might add to that. The 2009 police report on fatal traffic crashes found that 16.5 per cent of drivers involved in those crashes in the five years from 2004 to 2009 were unlicensed at the time of the crash when the driver's licence status was known. Within six months of actual impounding for unlicensed driving, the rate of unlicensed drivers involved in fatal traffic crashes dropped to 14.1 per cent, which reinforces what I was saying. This is the second-lowest rate in the past five years.

Hon KATE DOUST: I thank the minister. That is all useful information, but I am really interested in finding out whether the government has done, or is planning on doing, any academic research into how this type of legislation will actually change behaviour. Members would have noted from the statistics that I read out today, which were provided by the department, that there has been since July last year a substantial number of cars seized and impounded. I therefore thought that although the legislation was in place, it did not seem to have led to a rapid change in behaviour. I am just wondering whether at some point the government will look at whether this is an effective tool to modify driver behaviour, or whether it should be looking at other ways of modifying hoon behaviour in the community.

Hon PETER COLLIER: At this stage no research is planned into changed behaviour or changing behaviour as a result of the legislation, and there was not any research prior to that.

Hon LJILJANNA RAVLICH: Can the minister provide us with information about the current number of cars that are impounded and the periods for which they are impounded? Could he also take on notice trend data from the time of the first impounding to where we are at now?

Hon PETER COLLIER: The total number of vehicles impounded for hoon offences since July 2009 is 1 483. The total number of vehicles impounded for unauthorised driving offences since July 2009 is 7 269. The total number of vehicles that have been crushed or confiscated is two. The total number of hardship applications is 506. The total number of hardship applications granted is 109. The total number of surrender notices issued for hoon offences is 56. The total number of surrender notices issued for unauthorised driving offences is 150. I give an undertaking to provide trend data to the member.

Hon LJILJANNA RAVLICH: I wonder whether the member would be good enough to hand me that piece of paper, because certain categories were outlined there. Perhaps I could be given a photocopy of it.

Hon Peter Collier: It was an email to Hon Kate Doust. It is information.

Hon LJILJANNA RAVLICH: Let us share it around. How about passing it over?

Hon Peter Collier: Yes; okay.

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Hon LJILJANNA RAVLICH: Let us take the unauthorised driving category. Is the minister saying that there have been 7 269 confiscations for unauthorised —

Hon Peter Collier: Did you say confiscations or impoundments? That figure of 7 269 is the number of impoundments.

Hon LJILJANNA RAVLICH: That is impoundments. At any one time, how many cars are impounded in one place?

Hon Peter Collier: No, I can't —

Hon LJILJANNA RAVLICH: Can the minister take that on notice?

Hon Peter Collier: Yes.

Hon LJILJANNA RAVLICH: What I am really trying to get to is: where are these cars impounded? That figure of 7 269 that the minister has given me is a cumulative figure over a period.

Hon Peter Collier: That's right.

Hon LJILJANNA RAVLICH: So if I were to ask how many cars are impounded as of today's date, I would get a very different figure, and perhaps that might be a figure that we can work on. Can the minister give me that figure if he has it available?

Hon Peter Collier: Do you want to know the number today?

Hon LJILJANNA RAVLICH: Yes. I am trying to get a figure because —

Hon Peter Collier: It is around 25 per day over that period from 1 July last year to 15 April this year.

Hon LJILJANNA RAVLICH: But because they have to be in there for a period, more come in and then some go out. Therefore, I am trying to get a sense of whether we have 25 cars impounded somewhere or whether we have 2 500 cars impounded somewhere. I am told that there are a lot in Karratha. That might help the minister.

Hon Kate Doust: Karratha is full.

Hon LJILJANNA RAVLICH: Karratha is full.

Hon Peter Collier: It is 25 motor driver's licence impoundments and 20 hoon drivers. That is the average over that period.

Hon LJILJANNA RAVLICH: Okay. If since July 2009, 7 269 vehicles have been impounded for unauthorised driving offences alone, what has been the cost of impounding these vehicles?

Hon Peter Collier: For a 28-day impoundment, it is roughly \$900 per vehicle.

Hon LJILJANNA RAVLICH: I have asked for the cumulative cost. I am happy if the minister wants to give me a breakdown of the per unit cost, but I am after a cumulative cost, because I want to know what is the cost impact of this policy decision by government.

Hon Peter Collier: We haven't got that information at the moment.

Hon LJILJANNA RAVLICH: Clearly the minister has not. Can he provide that information for each of the categories that he has outlined?

Hon Peter Collier: Don't forget that it is the person who has to pay the cost for the release of the car.

Hon LJILJANNA RAVLICH: Yes, but the person is not paying for the 28 days that the vehicle is on site, wherever it is that the car is being impounded.

Hon Peter Collier: Yes, the person is paying.

Hon LJILJANNA RAVLICH: The person is. With these 7 269 vehicles, is the minister saying that the people lost their car, they had to pay to get the car out, and then they had to pay the rent for having their car impounded? Is that what the minister is telling me?

Hon Peter Collier: Yes, the \$900 is for the rental. That is the cost—the storage, the impounding, the lot.

Hon LJILJANNA RAVLICH: In view of that, can the minister nevertheless provide me with the cost of, or a breakdown of, this policy decision and how much it has cost the government to implement this policy?

Hon Peter Collier: Those people had to pay for it. It is an outstanding debt, so if they do not pay it, it is an outstanding debt to the government. It is not going to cost the government anything; it is going to cost the person.

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Hon LJILJANNA RAVLICH: So this is all cost neutral; there is no cost associated with this policy. No, that is not right, because we have had answers in the Parliament before, and that is not right.

Hon PETER COLLIER: I will clarify one thing. The \$900 will be paid for the impounding of the vehicle. That will be borne by the person whose vehicle was impounded. That debt is going to be incurred by that person. I am not quite sure whether we can provide any more information than that for the member. If she wants something specific, perhaps she can identify it, but I am not quite sure what else she wants.

Hon Ken Travers: Whilst the minister is on his feet, are you bringing in legislation to recoup more money? Is there some proposed legislation?

Hon PETER COLLIER: No, not at all. This is the impounding cost. It is an impounding fee. It is the \$900.

Hon Ken Travers: But when people don't pay it, the police are picking up that cost at the moment, aren't they?

Hon PETER COLLIER: They are.

Hon LJILJANNA RAVLICH: That is an excellent question. Let me rephrase it. What has been the cost to police of paying for the impoundment of those vehicles owned by those people who have not paid?

Hon PETER COLLIER: As I was saying, under the current legislation vehicles will not be released until payment. Does Hon Ken Travers disagree with that? The commissioner can then pursue that debt.

Hon Ljiljanna Ravlich: Are they pursuing it?

Hon PETER COLLIER: I will give an undertaking to get as much information on that as I possibly can. The cost is borne by the person whose vehicle is impounded.

Hon KEN TRAVERS: I had intended to try to keep out of this debate but now that we have got on to the financial side of it, it is important to clarify exactly what is going on here. As I understand it, vehicles are impounded. I agree with the minister that one cannot get one's vehicle back until one has paid for having the vehicle impounded. That cost is collected by the impounding company and incurred by the state. If the person does not pay the fee, the company that has impounded the vehicle does not seek to recoup the cost from the owner of the vehicle; it is picked up by the police department.

Hon Peter Collier: What I said earlier is correct. The commissioner cannot release the vehicle until the money is paid.

Hon KEN TRAVERS: If that is the case, are a range of vehicles currently held in the pound for which the company that is holding them has not been paid any money by anyone at this stage?

Hon Peter Collier: No.

Hon KEN TRAVERS: Who has paid for the cost of impoundment incurred by this state?

Hon PETER COLLIER: What I said originally was correct. I will go through it again. The towing contractor works for the commissioner. The commissioner incurs the cost. The vehicle can be sold if the fee cannot be paid. If need be, the commissioner can issue a debit note. There is also a process in the current act for the buying and disposal of uncollected vehicles. It is section 80J.

Hon KEN TRAVERS: In that case, if the value of the vehicle when it is sold is less than the total cost that has been incurred, the commissioner will pick up that cost. The police may be able to recoup the money from the owner of the vehicle but they will need to pursue that person through the courts to get that money.

Hon Peter Collier: From the alleged offender or when the offender is convicted.

Hon KEN TRAVERS: There is a cost, and that is the \$1.94 million that has been incurred by the department. If that is the case, could the minister explain something to us? In this year's budget one of the items listed under the three per cent efficiency dividend was savings associated with the implementation of the imminent hoon legislation. It was expected that \$8 million would be saved every year for the next four years as a result of that. Where does that saving of \$8 million come into this whole process? What impact will the legislation we are dealing with today have on the \$8 million that was expected to be saved in the budget?

Hon Peter Collier: What is that figure you were quoting?

Hon KEN TRAVERS: I think you said earlier that the total cost of it was \$1.94 million.

Hon Kate Doust: The amount of \$1.4 million was the debt that the police incurred.

Hon KEN TRAVERS: I thought it was for the costs the police paid out and the costs they recouped themselves.

Hon Peter Collier: I did not mention that.

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Hon KEN TRAVERS: That is fine; my apologies. Before we pass this legislation, it is important that we understand the financial implications of it. That is absolutely crucial. The way the minister has explained it today, even if the vehicles can be sold —

Hon Peter Collier: This legislation is about the early release of vehicles. If anything, it will improve the financial situation.

Hon KEN TRAVERS: Except it becomes a bit more complex as to who picks up the cost when a vehicle is released early. If the person whose vehicle was seized cannot afford to pay it, if it is released early, can the owner of the vehicle still get it out of impoundment?

Hon PETER COLLIER: In short, it is at the commissioner's discretion. A debt recovery process will be followed. That is the long and short of it.

Hon Ken Travers: Who has to pay it though?

Hon PETER COLLIER: Ultimately, the offender.

Hon Ken Travers: If the offender cannot afford it, can the owner of the vehicle —

Hon PETER COLLIER: With an early release, it is at the commissioner's discretion. For example, the commissioner used his discretion with the Lamborghini and the owner did not have to pay.

Hon KEN TRAVERS: In the case of the Lamborghini, I am sure that the commissioner used his discretion to get it out of the headlines as quickly as possible. Is the minister saying that we should just pass the legislation and leave it to the discretion of the commissioner, which means in some cases the owner of the vehicle can pay the fee and in other cases, the owner will not have to pay it and the commissioner will keep it from the person who committed the offence as opposed to the owner?

Hon Peter Collier: Can you just repeat your exact question? I think we are at cross purposes here.

Hon KEN TRAVERS: Before I do that, I want to make a comment. I support the principle of what we are trying to do. I want to make that very clear. The minister will recall that when the original bill was debated, the Labor opposition pointed out that there were inconsistencies and loopholes in the bill and that problems would arise. I use the same words for the Minister for Police that I used earlier today about the former Treasurer; that is, he was reckless and cavalier in his approach to managing these issues and created legislation that was going to create injustices within the community and would not target the offenders. I do not want to pass another bill and have someone claim in three months that he or she has not been dealt with justly because that person did nothing wrong. I am the first person to put up my hand and say that we should take cars off hoons who speed and do stupid things on the road. We should get them off the road and give them a quick, hard burst. I am trying to understand what will happen. I know the minister says that it is discretionary. Are there guidelines within which the discretion will operate? How will it be determined who will pay the cost of impoundment? If someone other than the owner of the vehicle was driving the vehicle when it was impounded and the police agree, under the clauses we are dealing with today, that they will return the vehicle to the owner —

Hon Peter Collier: Early release.

Hon KEN TRAVERS: Early release—the police allow the owner to have the vehicle back. Costs will have been incurred in towing and impounding the vehicle. Even if the owner of the vehicle were given it back the day after it was impounded, there would still be a \$600 or \$700 cost involved at that point.

Hon Peter Collier: That is when the offender will be pursued to cover those costs.

Hon KEN TRAVERS: That is what I want to know. Is the minister guaranteeing that the owner of the vehicle, in those circumstances, will never be pursued for the cost?

Hon Peter Collier: Yes.

Hon KEN TRAVERS: If that is the case, why is it not in the legislation?

Hon PETER COLLIER: As always, it is up to the discretion of the commissioner. Bear with me on this one.

Hon Ken Travers: I am trying to.

Hon PETER COLLIER: I understand. It is a good point. This is what it is all about. For example, if the owner of the vehicle is not the offender, he will not pay. For all intents and purposes, that is the case; he will not be liable for any costs when a vehicle is returned under early release.

Hon Ken Travers: So what if it is not released early?

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Hon PETER COLLIER: That is with early release. That is why we need the commissioner's discretion. For example, a situation may arise in which an employee is a multiple offender. The commissioner would have the discretion to say that the vehicle will not be released early. If early release were allowed in the case of a multiple offender, the commissioner would not do that without payment being first received. That is just one example.

Hon KEN TRAVERS: Maybe I am misreading the amendments the government is making. Would vehicles driven by multiple offenders be subject to early release?

Hon Kate Doust: You can get a substitution.

Hon PETER COLLIER: Exactly. That might happen if all the circumstances have been met. That is why we need the commissioner to have the discretion.

Hon KEN TRAVERS: This is why I cannot work out why we cannot put it in the legislation, to be honest. If it went through all the tests and the commissioner determined that early release was warranted, and if the intention is to not charge the owner but to seek to pursue the money from the offender, why not say in the legislation that the money will be sought from the offender and no costs will be incurred by the owner of the vehicle?

Hon Peter Collier: I think it is more fraught with problems if it is put in the legislation. That discretion is needed.

Hon KEN TRAVERS: I do not understand the discretion, because the minister is assuring us that it is never going to happen.

Hon Peter Collier: For all intents and purposes it is not going to happen.

Hon KEN TRAVERS: What does that mean? What are the scenarios in which the minister would envisage —

Hon Peter Collier: I have just given you one.

Hon KEN TRAVERS: They need to be treated separately. In the first instance, I would like a scenario in which, for the owner of the vehicle and the offender, it is the first time that the vehicle has been impounded and there is a possibility that the owner of the vehicle will incur the charges.

Hon Peter Collier: Sorry, what was that?

Hon KEN TRAVERS: I am asking the minister to give me an example in which it is the first time that this has ever happened for the owner and the offender. It is the first time, and the minister is assuring the chamber that the commissioner would never seek to recoup the cost from the owner of the vehicle —

Hon Peter Collier: The first time it has occurred?

Hon KEN TRAVERS: Yes, the first time it has ever occurred. The minister is assuring the chamber that the commissioner would always seek to recoup the money from the offender. If that is the case, why would we not put it into the legislation? Why do we need clarifications such as "for all intents and purposes" if it is so clear that on the first occasion that such an offence happens, the cost will never be recouped from the owner?

Hon Peter Collier: Okay; I understand that now.

Hon KEN TRAVERS: The second scenario painted by the minister is a situation where the offence has happened more than once. As I understand the further amendments that the government has brought to the chamber today, they set up a scenario where the commissioner has some discretion to return the vehicle to the owner on early release in certain circumstances. In a scenario in which the offence has happened previously, but the commissioner nevertheless takes the view that, in his discretion, there is still good reason to return the vehicle to the owner early, the owner may still be penalised by charging him the cost of impoundment and towing. That does not make sense to me, to be honest. If the owner meets all the tests for getting the vehicle back early, surely he should not incur a penalty. Even though the commissioner has accepted, through his discretionary mechanism, that it is okay to hand the vehicle back, the owner is still going to be effectively punished with a fine of the cost of impoundment. When the minister responds, I ask him to tell the chamber what the cost of impoundment will be the morning after the vehicle has been seized, towed and put into an impounding yard.

Hon PETER COLLIER: The amendments to the act came under the administration of the previous government in 2006. That was to ensure that the commissioner did not release vehicles without being paid. That was the whole point of the exercise; the government did not want the taxpayer to pay. However, this cannot be used across the board. We have to have that discretion so that not every vehicle necessarily requires payment. Hire vehicles are a perfect example; that is what is happening at the moment. It is then up to the hire company to make the payment for the impounding. It is up to the hire company to do that for an early release.

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Hon KEN TRAVERS: The hire company pays to get the vehicle back, and then it is up to the hire company to recoup the cost from the person who hired the vehicle—is that right?

Hon Peter Collier: Yes.

Hon KEN TRAVERS: What about taxis, then? There are amendments dealing with taxis. Will taxi operators be required to pay it and recoup the cost from the lessee of the taxi?

Hon PETER COLLIER: It could be part of a contract, yes, with a taxi.

Hon KEN TRAVERS: It could be, but what attitude will the police take? Will the police say that if it is a taxi, the owner should have made it part of his contract, so he will be charged the impoundment fee and will have to recoup the cost from the lessee? Will the police ask to examine the contract? How will the police operate this?

Hon PETER COLLIER: Again, it is up to the discretion of the commissioner, but the commissioner may require, for example, payment under a lease agreement if such a lease agreement exists between the driver of the taxi and the owner of the taxi.

Hon KATE DOUST: I thank the minister for that information. In a perfect world that is probably how it would be, and it should be that those sorts of details would be in a contract. However, given that we are now trying to fix this legislation, how will that sort of information be provided to interested players? How will taxidrivers and their companies know that this level of detail needs to be included in a contract in the instance that they might have to pay money back? Otherwise —

Hon Adele Farina interjected.

Hon KATE DOUST: That is right; in fact, I would imagine that all current contracts predate this legislation. Therefore, how do we sort of retrofit contracts that already exist between employers and employees, or contractors and subcontractors, or any other sort of arrangement whereby people use a car that is not their own for the purpose of their employment? How does the government propose to deal with that? What consultation had the government entered into with industry to discuss this type of problem before it drafted this bill and brought it into the other place?

Hon PETER COLLIER: The Department of Transport passenger services business unit is doing an education campaign with taxidrivers and omnibus drivers to ensure that they are aware of the situation.

Hon KATE DOUST: It is good that the department is running an education program; I am always very keen to see that happen with any legislation we introduce. However, that still does not answer my question about how people will deal with retrofitting detail of current contracts. How do people deal with that because I imagine a lot of these contracts would have been in place for a while? How will they deal with those situations?

Hon Peter Collier: What do you mean by “detailed current contract”?

Hon KATE DOUST: Say there is a contract between Swan Taxis and a driver, if this type of detail—if the car is impounded, who pays what—does not currently exist in the contract and it is signed and sealed, it may last for a couple of years. This is all just hypothetical. If this legislation is passed today or when we come back in a week’s time, how will adjustments be made so that the contract reflects the arrangement the minister has talked about in terms of recouping moneys?

Hon PETER COLLIER: Again, I think we are probably straying a bit. I understand where the member is coming from but ultimately, as I said before, it is up to the discretion of the commissioner. The ultimate aim, as came through the amendments in 2006, is that we not make the taxpayer pay the bill. In a lot of shift leases, for example, the owner will take the appropriate means. A lot of the shift lease contracts are done by handshake, with all due respect, that is why this educative —

Hon Kate Doust: That’s a worry.

Hon PETER COLLIER: They are in taxis —

Hon Ken Travers: I must say that when you kept talking about taxis and contracts I was starting to think that I am not sure that they have these sorts of complex contracts.

Hon PETER COLLIER: Precisely, because they do not exist in a lot of instances. Therefore, it depends on the arrangement in place but ultimately it is up to the discretion of the commissioner.

Hon KATE DOUST: I thank the minister but he did not answer my question about what type of consultation had occurred across industry about the changes that were being proposed prior to this legislation being introduced in the other place.

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Hon PETER COLLIER: There has not been consultation with industry.

Hon KATE DOUST: Was there consultation with anyone?

Hon PETER COLLIER: Departments of police and transport.

Hon KEN TRAVERS: I asked earlier, and I know it is probably part of a bigger question, what is the average cost for the seizure of a vehicle on the roadside that is held overnight just for the one night? What is the average cost per vehicle of the towing cost and the overnight cost?

Hon PETER COLLIER: I cannot give the member precise figures on this today for, I think, quite legitimate reasons. For example, if the police tow it or take it, there is zero cost for towing. If a contractor takes it, it is dependent on distance and a whole raft of issues, but I give an undertaking that we will get as comprehensive detail on that question as is possible for the member.

Hon KEN TRAVERS: I appreciate that —

Hon PETER COLLIER: I am sorry to interrupt you, member, but I have been provided with further information. The very crude approximate estimate is that it will be around \$130.

Hon KEN TRAVERS: Maybe the trick is to get the police to seize my car if I get into an accident because it will be cheaper than a private towing service! I would have thought that the amount would have been slightly higher than that, knowing the cost of towing, but I appreciate the minister's answer. At the time of the budget, the government said it expected that the imminent hoon legislation, which is the original legislation that we are seeking to amend today, was going to save \$8 million per annum. The government intended to save \$8 million as a result of that hoon legislation. I want to know whether that is the case and what impact this legislation will have on that \$8 million. Is it likely to increase or decrease the amount that will be saved?

Hon PETER COLLIER: The advice I have received is that the impact of this legislation will be cost neutral. It should not have any impact.

Hon KATE DOUST: If that is the case, during the second read debate I quoted a newspaper article from *The Sunday Times* on 2 May that referred to the \$4.71 million that the police had paid out in impounding costs and the amount that the police had recouped. The police still had a \$1.4 million shortfall. How will that be managed?

Hon Peter Collier: That is an outstanding debt, not a shortfall.

Hon KATE DOUST: That is not what *The Sunday Times* stated. It said that it was a shortfall. Is the minister saying that the media was wrong? A police spokesman said that there was a shortfall and that the Commissioner of Police would consider approaching the government for extra funding. Will the government bail out the police? I imagine that that figure will increase. Is it a shortfall?

Hon PETER COLLIER: The advice I have received is that it is outstanding debt.

Hon LJILJANNA RAVLICH: I have some sympathy for my colleagues because the more questions they ask, the murkier this whole thing becomes. Surely there is a chart or a piece of paper outlining the associated costs broken down into components. Is there not?

Hon Peter Collier: The costs of what?

Hon LJILJANNA RAVLICH: The impounding cost per unit, the cost of towing and the cost of getting a car out of impoundment. Surely regulations outline how this thing works and all the costs that are associated with it.

Hon Peter Collier: I have given an undertaking to provide information about costs, wherever possible, to each member who has asked me a question about it. If the member asks me a specific question, I will give her an undertaking that I will get the information.

Hon LJILJANNA RAVLICH: It is fine for the minister to give an undertaking to provide the information that has been asked of him, but it is a bit here and a bit there. When the minister sought an appropriation for the budget allocation for this policy, clearly there were components of the cost that made up the whole picture of what the total cost of this policy would be. What was the appropriation that the minister sought? I see that there is some discussion going on between the minister and his advisers. It is reasonable for us to ask the minister to provide that information to Parliament. Frankly, I do not believe that it should be up to members of Parliament to try to weave a picture of what the cost structure might be.

Hon Peter Collier: Specifically, what information do you want?

Hon LJILJANNA RAVLICH: I want any part of this policy position that has a cost attached to it to be itemised. That is specifically what I want. If the minister is telling me that he cannot produce that, I have very serious reservations about how the police go about their business and about what is happening to taxpayers'

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money. The minister asked me what I specifically want. That is what I want because I do not want to half-guess anymore.

Hon Peter Collier: Do you want the costs up to today or do you want to know the cost implications of this legislation?

Hon LJILJANNA RAVLICH: I want the costs up to today.

Hon Ken Travers: And I want the implications!

Hon LJILJANNA RAVLICH: And he wants the implications!

Hon Peter Collier: So we are not dealing with this legislation.

Hon LJILJANNA RAVLICH: We need to know what the baseline costs are —

Hon Peter Collier: Of what?

Hon LJILJANNA RAVLICH: Of the policy initiative —

Hon Peter Collier: It has not been introduced yet.

Hon LJILJANNA RAVLICH: I am talking about the total number of vehicles impounded for hoon offences since July, which is 1 483, and the total number of vehicles impounded for unauthorised driving offences. There are storage, towing and administrative costs. Surely to goodness there must be some administrative costs. There are costs for all manner of things and there may be some savings that are offset by the people who get their car released.

Hon Peter Collier: I can provide the information on the costs of the impounded vehicles and the costs that have been recovered, but not today. That should cover everything the member has asked for, unless she wants something else.

Hon LJILJANNA RAVLICH: That would be a good start. We are making progress because two minutes ago the minister was leading me to believe that that information could not be provided.

Hon Peter Collier: Not at all.

Hon LJILJANNA RAVLICH: If the minister can provide that cost, that would be good. I have another reservation because the bill broadens the ability for the police to release impounded vehicles early when the vehicle was in possession of a vehicle service provider, as was the case for the Lamborghini. It is interesting that the holding facilities are not full of Lamborghinis. Although this legislation deals with the furore that arose in relation to the yellow Lamborghini, I do not believe that too many people will be collecting Lamborghinis. More to the point is the fact that many of the cars that will be impounded will be dumpy cars, by and large, that the owners will be happy to walk away from, frankly. When the minister talks about cost recovery by selling the cars, the fact is that no-one will claim many of them and the government may incur the cost of having to crush them. I suspect that the government's chance of getting any outstanding moneys from some of the owners in a court of law is fairly remote. Can the minister provide us with some figures on how many cars have been abandoned? We do not have a category here for the number of cars that have been abandoned. It says that two have been crushed. I find that very low, but if that is what the minister is saying, I will cop that. I wonder how many cars have been abandoned.

Hon PETER COLLIER: Yes, I will once again give an undertaking to get that information. The information I have received at this stage is that it is about one in five.

Hon LJILJANNA RAVLICH: One in five; okay, that is 20 per cent. If the total number of vehicles impounded for hoon offences since July 2009—so that is not even a year—is 1 483 and we combine that with the figure for the total number of vehicles impounded for unauthorised driving offences since July 2009, which is also less than a year, at 7 269, that is a total of 8 700 or thereabouts, and 20 per cent of that is about 2 000. The minister said that it was one in five.

Hon Peter Collier: That was a loose figure.

Hon LJILJANNA RAVLICH: Hang on! All of a sudden it is a loose figure.

Hon Peter Collier: No, I said that I was acting on advice and that it was approximately one in five; so, yes, it is around 20 per cent.

Hon LJILJANNA RAVLICH: Is the minister disputing that 20 per cent of 1 483 plus 7 269, which, without a calculator, I will call 8 700—any higher bids?—is 1 800? Is that 1 800 cars abandoned?

Hon Peter Collier: Yes, and I said —

Hon Kate Doust; Hon Giz Watson; Hon Col Holt; Hon Max Trenorden; Hon Peter Collier; Chairman; Hon Ljiljanna Ravlich; Hon Ken Travers; Hon Adele Farina

Hon LJILJANNA RAVLICH: Yes, yes. yes?

Hon Peter Collier: No, I do not know whether it is that number.

Hon LJILJANNA RAVLICH: The minister said that it is one in five. That is the calculation—one in five.

Hon Peter Collier: Yes.

Hon LJILJANNA RAVLICH: And I have not even calculated these others. However, let us call it 1 800 cars abandoned. The minister has said, “Yes, we’ve got a deal.”

Hon Peter Collier: What is that?

Hon LJILJANNA RAVLICH: The minister has just said yes to 1 800 cars abandoned.

Hon Peter Collier: No, I didn’t say yes.

Hon LJILJANNA RAVLICH: Yes, he did.

Hon Peter Collier: No, I didn’t.

Hon LJILJANNA RAVLICH: Let us do it again.

Hon Peter Collier: I was sitting here having a conversation. I didn’t realise you were still going.

Hon LJILJANNA RAVLICH: The minister just told me one in five.

Hon Peter Collier: Yes, approximately.

Hon LJILJANNA RAVLICH: Approximately! One in five is pretty approximate. One in five is abandoned.

Hon Peter Collier: Yes.

Hon LJILJANNA RAVLICH: I have just told the minister and done the calculation that it is just under 8 800 or thereabouts and I said that 20 per cent of 8 800 is probably about 1 800. Has somebody got a calculator? I might be wrong, but I do not think I am too far off the bar.

Hon Peter Collier: Yes, but what is your question? What do you want to know?

Hon LJILJANNA RAVLICH: I am just asking whether the minister can verify that it is one in five—20 per cent—which would mean 1 800 cars have been abandoned, because then I can ask the minister what has happened to these abandoned cars.

Hon Peter Collier: I cannot give you a precise number and I gave an undertaking earlier to get that exact number, but I said that on the advice I have just received it is about one in five; so I will get that information for you. I can’t do any better than that.

Hon LJILJANNA RAVLICH: So total up 1 483 plus 7 269 and it is 20 per cent.

Hon Ken Travers: It is 1 750.

Hon LJILJANNA RAVLICH: I said 1 800 without a calculator; I was very close! All right, 1 750.

Hon Ken Travers: Point four.

Hon LJILJANNA RAVLICH: Point four! I have to ask: what has happened to these cars?

Hon Peter Collier: Are you going to sit down?

Hon LJILJANNA RAVLICH: Yes. Poetry in motion!

Hon PETER COLLIER: I thank Hon Ljiljanna Ravlich very much for the question. In some instances the cars are sold and that money is used to recoup the cost of the impoundment. In other instances when they are just not of any value at all, they are disposed of. As I mentioned in my comments today, I have been in dialogue with the Minister for Police to suggest that perhaps we might give those vehicles to our state training providers. I think that would be a very positive step forward; but that is the situation as I am advised.

Hon LJILJANNA RAVLICH: The minister will not need them for training as the number of apprentices in this particular category of training has gone down. Perhaps if he produces the cars, the number might go back up.

Hon Peter Collier: Which area is that?

Hon LJILJANNA RAVLICH: In metals.

Hon Peter Collier: Metals?

Hon LJILJANNA RAVLICH: Metals, automotive. I have just met with them.

Hon Kate Doust; Hon Giz Watson; Hon Col Holt; Hon Max Trenorden; Hon Peter Collier; Chairman; Hon Ljiljanna Ravlich; Hon Ken Travers; Hon Adele Farina

Hon Peter Collier: Keep going.

Hon LJILJANNA RAVLICH: Let us go back to this question. Can the minister now—this is very serious—

Hon Peter Collier: Yes, I am too.

Hon LJILJANNA RAVLICH: Can the minister now give me an undertaking that he will provide me with a breakdown of those that were sold and the revenue received? In other words, how much did the police make when they sold them?

Hon Peter Collier: Yes, that is available.

Hon LJILJANNA RAVLICH: Okay. Also, the minister is going to give me the number of those that were of no value and so were disposed of, and he might like to give me the cost of the disposal.

Hon Peter Collier: I don't know whether we can get that.

Hon LJILJANNA RAVLICH: There may well be another category of doing something with 1 700 abandoned cars. Can the minister give us an undertaking that he will provide information in respect of that?

Hon Peter Collier: Yes.

Hon KEN TRAVERS: Earlier when I asked the minister about the \$8 million, he said that this bill is revenue neutral.

Hon Peter Collier: Yes.

Hon KEN TRAVERS: I must say that I find it extremely hard to believe that it will not have any impact on the finances. If we go back to those issues, if a vehicle is impounded and then another vehicle is seized to replace it because the earlier one is released, that has to have a cost. I would imagine that if at least one in five vehicles is abandoned—a reasonably large percentage—it is because their value is less than the cost of paying to get them out and that is why they are abandoned.

Hon Peter Collier: Less than \$900, yes.

Hon KEN TRAVERS: I would have thought swapping vehicles around would incur some cost. For those vehicles that are abandoned, that must have some impact on the finances. I would therefore like a little more explanation as to whether the government is on track to make this \$8 million saving; and, if so, what impact will this legislation have on that \$8 million?

Hon PETER COLLIER: I just reinforce that this provision in the bill is anticipated to be cost neutral. As I said, I cannot be any more definitive than that. The two factors that need to be taken into account are that the vehicles are not released until the commissioner is paid in the first place; and, in the second place, once they are released, if the commissioner is not paid, the commissioner then seeks payment from the offender.

Hon KEN TRAVERS: I understand all of those circumstances in which payment is not made. But the government is clearly incurring a debt at the moment for vehicles that are abandoned and the cost of impounding them is more than the government can ever recoup from the vehicle. I hope, when the minister gets some of the vehicles for the state training system, that it will include Joondalup TAFE and the Motor Industry Training Association—if I can just put a little plug in for MITA—getting a couple of those vehicles. In all those circumstances there will still be a cost incurred to the state, so I would have thought there should be some figures on that. I am happy for the minister to take that question on notice, and I assume that when he says that he will take it on notice, what he is intending to do is provide those answers as part of his third reading speech when we get to the third reading stage when we come back after the break.

Hon Peter Collier: Yes.

Hon KEN TRAVERS: Perhaps one of the things the minister could undertake is to give us a clearer indication at that time of how much of the \$8 million the government has saved up to this date. So, \$8 million was estimated in the budget; how much of it has been saved? The minister can take that on notice to give us the answer as part of his third reading speech.

Hon PETER COLLIER: That is a very good suggestion from Hon Ken Travers, because I cannot provide any more information than I have already done at this stage, so I will do so during the third reading.

Hon ADELE FARINA: I just want to check something with the minister. In a situation in which a car is abandoned and the police proceed to sell the vehicle and the sale cost of the vehicle returns less than the cost of impoundment, do the police then pursue the offender for the balance of the cost?

Hon PETER COLLIER: Yes, the offender is liable for the balance.

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Hon ADELE FARINA: What is the cost of pursuing the offender for the balance of the cost?

Hon PETER COLLIER: First of all, the person will receive a letter and an invoice; secondly, there is a debt collector; and, thirdly, if necessary, the matter will go through the court system.

Hon ADELE FARINA: I did not ask for the process; I asked for the cost. Obviously, if the government ends up in court pursuing the balance of the money owing, there will be a cost involved, and in some situations the people who are being pursued do not have the capacity to pay anyway. I find it very difficult to believe that there have not been any write-offs of the debt. I suspect that the \$1.4 million shortfall—which the minister says is not a debt; it is just a shortfall because the money has not yet been recovered—is not likely to be fully recoverable in any event.

Hon PETER COLLIER: We at no stage said that there would not be any write-offs. I have never said that. If it is going to cost more to collect it, the person will not be pursued. However, with regard to the cost, we will provide the information that is required—what we can provide, that is.

Hon KATE DOUST: I do not think anyone has explained to me what criteria are used when it comes to making a decision for early release of an impounded car.

Hon Peter Collier: Do you mean to require payment for an early release?

Hon KATE DOUST: No. Say the commissioner, as the minister said earlier, has the capacity to make that decision. On what basis does he make the decision? What criteria does he work through to decide whether that car should be released in the individual situation?

Hon PETER COLLIER: That is contained within the bill that we are dealing with.

Hon Kate Doust: Which clause?

Hon PETER COLLIER: There are several clauses. Clause 10 is the main one, and it is also contained in government amendment 17/10, which amends clause 10.

Hon ADELE FARINA: Would the minister be able to advise members whether any vehicles have been damaged during the period that they have been impounded?

Hon PETER COLLIER: I will get that information for the member.

Hon ADELE FARINA: While the minister is getting that information, he might also check who has borne the liability for that cost—that is, whether it is the people who are holding the car or whether it is the state.

Hon PETER COLLIER: Yes.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clauses 4 and 5 postponed until after consideration of clause 6, on motion by Hon Peter Collier (Minister for Energy).

Clause 6: Sections 79BCA and 79BCB inserted —

Hon PETER COLLIER: I move —

Page 6, after line 29 — To insert —

79BCC. C cancelling notices to surrender

(1) In this section —

notice to surrender means —

- (a) a surrender notice given under section 79BA; or
- (b) a surrender substitute vehicle notice given under section 79BCA; or
- (c) a surrender alternative vehicle notice given under section 79BCD.

(2) If a senior police officer is satisfied that —

- (a) a notice to surrender has been given to a person in respect of a vehicle; and
- (b) the vehicle has not been impounded under section 79BB, 79BCB or 79BCE, as the case may be; and
- (c) either —

Extract from Hansard

[COUNCIL - Thursday, 6 May 2010]

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Hon Kate Doust; Hon Giz Watson; Hon Col Holt; Hon Max Trenorden; Hon Peter Collier; Chairman; Hon Ljiljanna Ravlich; Hon Ken Travers; Hon Adele Farina

- (i) if the vehicle were so impounded, the vehicle would be a vehicle that could, under section 79D, be released before the impounding period ends; or
- (ii) the vehicle's condition is such that it no longer functions as a vehicle and a licence could not be issued for it under Part III,

the officer may cancel the notice to surrender.

- (3) As soon as is practicable after a senior police officer cancels a notice to surrender, the officer must give a written notice of the cancellation to the person to whom the notice to surrender was given.

79BCD. Notice to surrender alternative vehicle if surrender notice cancelled

- (1) This section applies if —
 - (a) under section 79BA a surrender notice is given to a person responsible for a vehicle (**vehicle A**) the driver of which (the **alleged offender**) is suspected of having committed an offence (the **offence**); and
 - (b) under section 79BCC the surrender notice is cancelled before vehicle A is impounded under section 79BB; and
 - (c) the alleged offender is a responsible person for one or more other vehicles.
- (2) If this section applies, a member of the Police Force may give the alleged offender, personally or by registered post, a notice in accordance with this section (a **surrender alternative vehicle notice**).
- (3) The surrender alternative vehicle notice cannot be given after 28 days after the date on which the surrender notice was cancelled.
- (4) The surrender alternative vehicle notice must contain a statement to the effect that, because vehicle A will not be impounded, a vehicle for which the alleged offender is a responsible person (the **alternative vehicle**) is required to be surrendered to the Commissioner for impounding instead of vehicle A.
- (5) The surrender alternative vehicle notice must specify the following —
 - (a) in relation to the offence, its details and the time and place at which it is suspected to have been committed;
 - (b) which of sections 79(1) and 79A(1) is the provision that authorised the impounding of vehicle A (the **impounding provision**);
 - (c) sufficient details of vehicle A to identify it;
 - (d) when the surrender notice was cancelled under section 79BCC;
 - (e) sufficient details of the alternative vehicle to identify it;
 - (f) if the impounding provision is section 79(1) and the alleged offender is a previous offender as defined in section 79(1A), sufficient details to explain why the alleged offender is regarded as a previous offender;
 - (g) the length of the impounding period for the alternative vehicle, which is to be —
 - (i) if section 79(1) was the impounding provision for vehicle A, either 28 days or 3 months according to which of those periods was the impounding period for which section 79(1) required vehicle A to be impounded; and
 - (ii) if section 79A(1) was the impounding provision for vehicle A, 28 days;

- (h) the place at which, and the time of day during which, the alternative vehicle and its keys are required to be surrendered under this Division;
 - (i) the last day on or before which the alternative vehicle and its keys are required to be surrendered, being the seventh day after the day on which the notice is given.
- (6) The surrender alternative vehicle notice must also include —
- (a) a statement to the effect that this Division contains law about the notice and the impounding of the vehicle; and
 - (b) a statement as to the effect of section 79BCE(5); and
 - (c) a statement to the effect that failure to comply with the notice will result in the vehicle being impounded by operation of section 79BCE(2).
- (7) If the alleged offender is a responsible person for 2 or more other vehicles, the surrender alternative vehicle notice must specify only one of them as the alternative vehicle, being the one decided by the member of the Police Force issuing the notice.

79BCE. Consequences of surrender of alternative vehicle notice

- (1) If a responsible person who is given a surrender alternative vehicle notice under section 79BCD surrenders the alternative vehicle specified in the notice according to the notice, the vehicle is impounded by operation of this subsection for a period that commences at the time when the vehicle is surrendered.
- (2) If a responsible person who is given a surrender alternative vehicle notice under section 79BCD fails to surrender the alternative vehicle specified in the notice according to the notice, the vehicle is impounded by operation of this subsection for a period that commences at the time when a member of the Police Force takes possession of the vehicle for the purpose of impounding it.
- (3) An impounding period the length of which is specified as 28 days or 3 months in a surrender alternative vehicle notice includes the part of the day on which the vehicle is impounded that is after the impounding occurred even though including that part of the day makes the period more than 28 days or 3 months, as the case requires.
- (4) The period for which a vehicle is impounded by operation of subsection (1) or (2) ends when the impounding period has passed since the end of the day on which the vehicle was impounded.
- (5) A responsible person who is given a surrender alternative vehicle notice under section 79BCD commits an offence and is liable to a fine of 50 PU if, when the alternative vehicle specified in the notice has not been impounded by operation of subsection (1) or (2) as a consequence of the notice, the person disposes of an interest that the person has in the vehicle.

Hon GIZ WATSON: I think members need to appreciate that we are dealing with something fairly convoluted. There is an amendment to which we are moving an amendment. Just by way of suggestion, for those who are interested in following this, I think it would be interesting to know what the first amendment does and what the amendment to the amendment does, for the benefit of the sanity of all of us, if the minister could explain that. I have all the explanatory notes in front of me, and I could read them out. I just think that if we do not have an explanation, we will not quite know what we are dealing with.

The CHAIRMAN: If the minister is in favour of that, could he please address those issues?

Hon PETER COLLIER: Clause 6 introduces proposed sections 79BCA and 79BCB. Proposed section 79BCA empowers a member of the police force to give an alleged offender a surrender substitute vehicle notice. A surrender substitute vehicle notice may be given where the vehicle used in the commission of the alleged impounding offence was eligible for early release and the alleged offender is the responsible person for one or

more other vehicles. Proposed section 79BCB is a technical amendment and sets out the consequences that flow from the surrendering substitute vehicle.

Hon GIZ WATSON: I am going to take the liberty of reading from the explanatory memorandum because that might give us a bit more of an idea of what we are dealing with. It might take a minute but I am finding it hard to juggle this in my head. By way of commentary, I think it is exceedingly unfair that a representing minister has to deal with this sort of mess. It would have been a lot simpler if the government produced a different bill or referred this to the Standing Committee on Legislation, which could tell us what we are dealing with.

I refer to the explanatory memorandum to the Road Traffic Amendment Bill 2010. In a sense, it is what the minister just said but it is much more formal. It states —

6. Sections 79BCA and 79BCB inserted

This clause will insert two new sections into Part V Division 4.

Proposed new section 79BCA

Section 79D of the *Road Traffic Act 1974* (“the Act”) provides that the Commissioner of Police is not to release a vehicle impounded by a member of the Police Force, or surrendered for impounding following the giving of a surrender notice, prior to the end of the applicable impounding period, unless certain, limited circumstances apply.

Examples of these circumstances are:

- at the time of the commission of the alleged offence, the vehicle that was used in its commission was stolen or was a hired vehicle;
- exceptional hardship will be suffered if the impounded vehicle is not released.

Clause 8 will amend section 79D to expand upon these circumstances.

It is considered that, where an impounded vehicle is released in any of these circumstances and the alleged offender is the responsible person for another vehicle that is a reasonable impounding prospect, the alleged offender should be required to surrender that vehicle for impounding in place of the released vehicle.

Proposed new section 79BCA will enable this to occur. It will empower a member of the Police Force to give the person (the alleged offender) a “surrender substitute vehicle notice”, requiring the surrender of a vehicle for which the alleged offender is the responsible person, where:

- an impounded vehicle is released prior the end of the applicable impounding period pursuant to section 79D; and
- the alleged offender is the responsible person for one or more vehicles.

(See proposed new sections 79BCA(1) and (2).)

I hope all members are following this. It continues —

If the alleged offender is the responsible person for more than one vehicle, the member of the Police Force giving the “surrender substitute vehicle notice” is to nominate the vehicle that is to be surrendered. Only one vehicle may be required to be surrendered. ...

A “surrender substitute vehicle notice” will only be able to be given to an alleged offender after the release of the vehicle that was impounded following the commission of the alleged offence. ...

In addition, the “surrender substitute vehicle notice” must be given within 28 days from the date of the release of the initially impounded vehicle. ...

Proposed new sections 79BCA(4), (5) and (6) will require the “surrender substitute vehicle notice” to contain relevant information regarding the substitute vehicle, the circumstances and legislation that give rise to the power to require its surrender, and the consequences of non-compliance with the notice.

I ask members to bear with me as I have only another half a page. It continues —

Proposed new section 79BCB

This proposed new section will set out the different consequences that may result following the giving of a “surrender substitute vehicle notice”.

Proposed new section 79BCB(1) will enable the vehicle to be impounded by the responsible person for the vehicle (the alleged offender) surrendering the vehicle to be impounded.

Proposed new section 79BCB(2) will enable the vehicle to be impounded by a member of the Police Force, if the alleged offender fails to comply with the “surrender substitute vehicle notice”. The member will have recourse to powers under section 78C of the Act to effect to the impounding.

I presume that should read “to effect the impounding”. I continue —

Proposed new sections 79BCB(3) and 79BCB(4) are technical provisions intended to clarify when the applicable impounding period will come to an end and how the impounding period is to be calculated.

Proposed new section 79BCB(5) will provide that it is an offence for a person to dispose of an interest the person has in a vehicle that is the subject of a “surrender substitute vehicle notice”, if the vehicle has not yet been impounded.

That is what we were going to do under the bill. Perhaps I might invite the minister to comment. What does the amendment do to that amendment?

Hon PETER COLLIER: This amendment will provide for the insertion of new sections 79BCC, 79BCD and 79BCE. New section 79BCC will enable a surrender notice, a surrender substitute vehicle notice or a surrender alternative vehicle notice to be cancelled if the vehicle the subject of the notice has not yet been impounded and the vehicle has been written off or otherwise so significantly damaged or altered that it is incapable of being licensed or a person is able to establish that if the vehicle were to be impounded, it would be eligible for early release. In either of these circumstances it would be counterproductive to carry on with requiring the surrender of the vehicle.

New section 79BCD will empower a member of the police force to give an alleged offender a surrender alternative vehicle notice where a surrender notice or surrender substitute vehicle notice has been cancelled pursuant to section 79BCC and the alleged offender is the responsible person for one or more vehicles other than the vehicle that was the subject of the cancelled notice. The surrender alternative vehicle notice will require the alleged offender to surrender to the commissioner for impounding one of the vehicles for which the alleged offender is the responsible person. If the alleged offender is the responsible person for more than one vehicle, the member of the police force giving the surrender alternative vehicle notice is to nominate the vehicle that is to be surrendered.

New section 79BCE sets out the consequences of failing to comply with the surrender alternative vehicle notice or of disposing of an interest in the vehicle the subject of the notice before it has been impounded. It reflects the content of proposed section 79BC relating to surrender notices and proposed section 79BCB relating to surrender substitute vehicle notices.

Hon GIZ WATSON: I thank the minister. That has helped somewhat. To be clear, it is expanding or it is making an additional provision for the circumstances where a vehicle has been damaged to a certain point and is not worth impounding. Is that correct? Is that new?

Hon PETER COLLIER: Yes. For example, a surrender notice has been given or issued, but the person establishes that the vehicle would be eligible to be released if it were impounded or, alternatively, when the vehicle has not been impounded, it is worthless—it has been written off.

Hon GIZ WATSON: The minister kindly read out the explanatory memorandum to the chamber. In what circumstance would a vehicle be eligible for early release?

Hon PETER COLLIER: Those circumstances are listed under section 79D. The bill will be adding to that.

Hon GIZ WATSON: Section 79D as it already exists?

Hon Peter Collier: As it will be amended.

Hon GIZ WATSON: Okay. I will try something else. It involves a bit of mental gymnastics to anticipate something we have not yet dealt with. I refer to the cancellation of vehicle licences. Section 79BD(1) states that if a person does not surrender his vehicle as requested under section 79BA, the commissioner may, as I understand it, request the director general to suspend the vehicle licence. Such a decision could have a significant consequence. Licence suspension usually has the consequence of the insurance of the car lapsing, for example. That raises a number of questions. The minister may be pleased to know that I provided advance notice of these questions, so he will hopefully have some answers to them. I always like to be helpful! Has the minister considered such consequences when proposing to suspend a vehicle’s licence?

Hon PETER COLLIER: Is there a definitive policy reason? Yes, there is. I will read out the answer for the benefit of the chamber, but the member might also like to get a copy during the break. Section 79BD provides that where a vehicle the subject of a surrender notice is not surrendered in compliance with the notice, the Commissioner of Police may request the director general to suspend the vehicle licence relating to that vehicle. The government will amend section 79BD for consistency, so that it will also include reference to the new surrender substitute vehicle notice and the new surrender alternative vehicle notice. The amended section 79BD will empower the Commissioner of Police to request the director general to suspend the vehicle licence relating to a vehicle the subject of a surrender substitute vehicle notice or a surrender alternative vehicle notice when a person fails to comply with such a notice. The fact that non-compliance with a notice can result in the suspension of the vehicle licence is intended to strongly deter a responsible person from electing to not comply with a notice requiring the surrender of a vehicle for impounding or from attempting to evade police endeavours to impound a vehicle. This consequence is clearly set out in the relevant notice, which I stress is given personally or by registered post. Proposed section 79B(3B) will enable the cancellation of the notice if a person is able to establish that, were the vehicle to be surrendered for impounding, it would be eligible for early release. If there are no grounds for the early release of the vehicle, the vehicle is to be surrendered. Section 78C provides police with the necessary powers to impound a vehicle following any failure to comply with a notice. Section 79BD(2) empowers the commissioner to request the director general to revoke the suspension for any reason the commissioner considers appropriate. In addition, it requires the commissioner to request the director general to revoke the suspension if the commissioner becomes aware that any of the circumstances set out in section 79D relating to the early release of an impounded vehicle exist.

Committee interrupted, pursuant to temporary orders.

[Continued on page 2588.]

Sitting suspended from 4.15 to 4.30 pm