ROAD TRAFFIC AMENDMENT (HOONS) BILL 2009

Second Reading

Resumed from 12 August.

MR R.F. JOHNSON (Hillarys — Minister for Police) [11.37 am] — in reply: I have already thanked members for their contributions to the second reading stage of this debate. A few key things became apparent, and I would like to touch on them before we proceed to consideration in detail. Firstly, opposition speakers said a number of times that there was no evidence that the current legislation is not working. This is patently incorrect, and I will explain why. Let us look at the statistics. This legislation commenced operation in September 2004. Up to 31 December 2004, 152 vehicles were impounded for hoon offences. In 2005, 393 vehicles were impounded. In 2006, 350 were impounded. In 2007, 954 were impounded. In 2008, 1 774 were impounded, which is almost double the number of impoundings in 2007. We are only seven and a half months into 2009 and there have been 900 impoundings.

Ms M.M. Quirk: That is not the point that was made, but go on. We said that the government's legislation—in the minister's words—was directed towards repeat offenders. We were talking about the existing legislation.

Mr R.F. JOHNSON: I will come to that.

Ms M.M. Quirk: Good. I do not want to be verballed, because that is not what we said.

Mr R.F. JOHNSON: That is what the member said. I have taken in every word that the member said.

Ms M.M. Quirk: The minister referred to repeat offences, but he should go on.

Mr R.F. JOHNSON: That is not a problem, and I will continue. These numbers represent the total number of vehicles impounded. Through manual records kept by Western Australia Police—I will explain shortly why it has been necessary to compile this information manually—I can advise that the number of second or subsequent offenders is increasing in leaps and bounds.

Ms M.M. Quirk: That is not consistent with the figures you gave us.

Mr R.F. JOHNSON: Manual records indicate that four individuals convicted of a hoon offence committed a further hoon offence in 2005.

Ms M.M. Quirk: Four out of how many—1 400?

Mr R.F. JOHNSON: Member, that was in 2005; do not get the figures mixed up.

Ms M.M. Quirk: So four out of 2 005?

Mr R.F. JOHNSON: No, in the year 2005. In 2006 the figure was 16; in 2007 it was 19.

Ms M.M. Quirk: What was the number?

Mr R.F. JOHNSON: I am telling the member the number of repeat offenders. The member for Girrawheen can ask me questions during consideration in detail. I am responding to the comments she made and the questions she asked.

Mr W.J. Johnston: I have a point of order.

The ACTING SPEAKER (Mr J.M. Francis): The member for Cannington.

Mr W.J. Johnston: It doesn't matter.

Mr R.F. JOHNSON: If members opposite do not like my response, it is for them to take up.

Mr W.J. Johnston interjected.

Mr R.F. JOHNSON: I am responding to spurious figures that, not the member for Cannington, but other members threw up during the second reading debate.

Ms M.M. Quirk interjected.

The ACTING SPEAKER: Order!

Mr W.J. Johnston interjected.

Mr R.F. JOHNSON: No, they have been skewed by the member for Girrawheen.

As I think I already said, in 2007 the figure was 19; in 2008 it was 155. In other words, 155 previous offenders committed a further offence. I remind members that in 2008 the Labor government amended this legislation to increase the duration of the impounding period for hoon offences from seven days for a first offence and 28 days

for a second. But it does not seem to have had the desired effect. That was under legislation introduced by members opposite.

Mr W.J. Johnston interjected.

Mr R.F. JOHNSON: The member for Cannington should not interject. I am not taking interjections from him anymore.

Mr W.J. Johnston interjected.

The ACTING SPEAKER: Order!

Mr W.J. Johnston interjected.

The ACTING SPEAKER: Order, member for Cannington!

Mr W.J. Johnston interjected.

The ACTING SPEAKER: Is the member seeking to make a point of order? If so, he should stand up.

Mr W.J. Johnston interjected.

The ACTING SPEAKER: I asked the member to stop interjecting. The minister.

Mr R.F. JOHNSON: Already as at the first week of August 2009, manual records indicate that 103 previous offenders committed a further hoon offence during 2009. The total number of impoundings to date for 2009 is 900. This means that 11.47 per cent of the 2009 impoundings to date involved an alleged offender who had already been convicted of one or more hoon offences. They are the facts. Clearly, the longer impounding periods brought in by the opposition in 2008 did not succeed in reducing first-time hoons or in preventing repeat hoon offences. This leads me to the next point.

Mr W.J. Johnston interjected.

Mr R.F. JOHNSON: Mr Speaker, I am sick to death of hearing the drivel coming from that member.

The ACTING SPEAKER: Order, member for Cannington!

Mr R.F. JOHNSON: He had his chance to speak. All I get is incessant comments.

Mr W.J. Johnston interjected.

The ACTING SPEAKER: I will not debate my request that the member for Cannington cease interjecting.

Mr W.J. Johnston interjected.

Mr R.F. JOHNSON: The member for Cannington is taking no notice of the direction of the Acting Speaker. If he is not careful, he will be thrown out of the chamber.

The ACTING SPEAKER: The minister has the call.

Mr R.F. JOHNSON: Thank you, Mr Acting Speaker.

[Quorum formed.]

Mr R.F. JOHNSON: Various members opposite suggested that this legislation would lower the bar and lead to impounding for low-level offences committed by persons who are not hoons. I am here to tell members that hoons come in many shapes and sizes. They are not all 17 to 25-year-old males with high-performance vehicles and, if we believe the member for Gosnells, small appendages. Currently, the legislation provides that a hoon offence is reckless driving when the speed limit is exceeded by more than 45 kilometres an hour, or reckless driving at a speed of more than 155 kilometres an hour, or wilful —

Ms M.M. Quirk: I can't hear you.

Mr R.F. JOHNSON: That is the member's hard luck; I am speaking quite loudly. Her colleagues near her are talking.

The ACTING SPEAKER: Order! Perhaps if the members behind the member ceased having a conversation in the chamber, she might be able to hear the minister.

Mr R.F. JOHNSON: If the member for Maylands cannot hear, she should come closer or turn up the volume on her speaker.

I was referring to reckless driving involving speeds of above 155 kilometres an hour, wilfully driving a vehicle so as to cause excessive smoke or noise, a reckless driving offence, a dangerous driving offence committed in a circumstance of aggravation such as racing the clock or racing another vehicle. That is unnecessarily

complicated. This bill makes it clear that a hoon is basically a reckless driver. No qualification of the particular kind of recklessness is necessary. A reckless driver wilfully drives a motor vehicle in a manner that is inherently dangerous. It is about the driver's attitude rather than the objective quality of the driving. It is more than inattention or a mistaken or careless act, as the member for Mindarie would have us believe. The opposition is correct that these changes will result in more impoundings. That is the idea. Reckless drivers are hoons and their cars should be impounded. The circumstances of aggravation do not, could never and should not be required to describe each and every kind of hoon behaviour.

The opposition thinks it has a solution to this issue. It has foreshadowed that it will move amendments to expand the definition of "circumstances of aggravation" to include hoon driving behaviours such as motorcycle wheelies and reckless or dangerous driving to escape police pursuit. What about the hoon driver who causes another person to car surf, the hoon driver who travels at speed through red light after red light or the hoon driver who drives through a pedestrian mall at a speed that is clearly too high for the situation but is not 45 kilometres above the speed limit? That reflects the danger with listing offences. We can never be comprehensive. The government is correct in saying that all reckless drivers are hoons. An even more important reason for these changes is that the existing legislation does not work properly.

Following these amendments, when it is clear that all reckless driving offences are hoon offences, it will be possible to determine whether an offender is a second or subsequent offender and liable for the more onerous sanction that goes with it.

Ms M.M. Quirk interjected.

Mr R.F. JOHNSON: I am responding to the comments the member made. She wants me to comment correctly, does she not? I am quoting at various points. I do not usually need to read a speech; she knows that.

Ms M.M. Quirk: Not when you want to be accurate.

Mr M.P. Whitely: You have two speeches: the No 1 and No 2 speeches.

Mr R.F. JOHNSON: They are very good speeches. Let us get back to the legislation and the comments made by members opposite. I am trying to respond to some of them. The member for Girrawheen made a lot of comments, the answers to some of which will come out during the consideration in detail stage. She asked whether consideration had been given to the use of delicensing and wheel clamping. The answer is yes, those matters were considered.

Ms M.M. Quirk: It was immobilising.

Mr R.F. JOHNSON: I will have to check the *Hansard*.

Ms M.M. Quirk: There is no such word as delicensing.

Mr R.F. JOHNSON: Of course there is. Delicensing a vehicle means taking away the registration numbers.

Ms M.M. Quirk: There is no such word as delicensing in the English language, so I would not have used that language. I referred to immobilisers and wheel clamping, minister.

Mr R.F. JOHNSON: I will not argue with the member if she used those terms.

Ms M.M. Quirk: That is all right. The minister said he was quoting me accurately, but he is not. I apologise because, clearly, my diction was bad.

Mr R.F. JOHNSON: The member does not have to apologise; we accept that. Was wheel clamping considered? Yes, it was, but it would be very expensive.

Ms M.M. Quirk: What cost?

Mr R.F. JOHNSON: I do not know the exact cost, but it was put to me that wheel clamping all hoons' cars would be very expensive; the wheel clamps could be damaged; and if people wanted to, they could manipulate the wheel clamps to get their vehicle free. Certainly the Department of Transport does not like delicensing, if I can call it that, even though the member for Girrawheen does not agree with that term. In other words, delicensing is taking the plates off a vehicle. The department believes that the licence plate is the birth certificate of a vehicle. A vehicle should always be registered visually—in a manner that can be seen. Of course those things were considered.

The member for Mandurah did not make any comments of substance, but the member for Cannington made a worthy comment. He asked what effect a licence suspension has on compulsory third party insurance. That was one of the questions he asked, and it is a good question. I asked Hon Jim McGinty that question about six years ago when he was the Attorney General because I had the same concern.

Mr W.J. Johnston: I was not here six years ago. Do you have the answer? That is the question I am asking, because you do not seem to know much.

Mr R.F. JOHNSON: I do know the answer, my friend.

Mr W.J. Johnston interjected.

Mr R.F. JOHNSON: I am trying to show some courtesy by responding to a question that the member asked.

Mr W.J. Johnston: Answer the question. It is not that hard. You can cope. Read what it says on the piece of paper and you will get the answer out eventually.

Mr R.F. JOHNSON: The member must be hell to live with.

Mr W.J. Johnston: Hold up the paper and read it.

Mr R.F. JOHNSON: For the benefit of the member for Cannington, I will tell him what the answer is because obviously he does not know much. The effect of a licence suspension on compulsory third party insurance is this: if I drive a vehicle that is not registered for third party insurance—in other words, there is no registration sticker on the window—and I hit someone, third party property is not covered. If I hit someone and I cause that person an injury, all of that person's medical expenses are covered by the Insurance Commission of Western Australia. That is the case even if the vehicle that hit the person was not insured for third party insurance. That is very fair. I asked the then Attorney General the same question about six years ago because I was interested in the answer to it. I was concerned that the medical expenses of some persons might not get paid. Of course, third party insurance does not allow a person who has been injured to claim for ongoing care costs, which are very expensive. An injured person's medical expenses are covered but not the ongoing care costs. That person could not claim for damages in a court. That is the situation.

The member for Gosnells asked whether consideration had been given to restricting certain persons—I presume the member means novice drivers—from driving high-powered vehicles. That certainly has been suggested by many commentators in the general arena. There is no proof at this stage that someone who drives a six or eight-cylinder car is any worse than someone who drives a souped-up four-cylinder car. Some of the smaller cars can be more dangerous than the bigger cars. Until someone can provide some hard evidence —

Ms M.M. Quirk: Minister, that was Liberal Party policy. Have you had a conversion on the way to Damascus? Are you now looking at the evidence?

Mr R.F. JOHNSON: We are talking about high-powered cars.

Mr W.J. Johnston: That was Liberal Party policy. Are you now saying that it does not work?

Mr R.F. JOHNSON: No, I am not saying that at all. I am saying that I would like to see some evidence —

Ms M.M. Quirk: In other words, there is no evidence.

Mr R.F. JOHNSON: No evidence has been shown to me that that is the situation.

Mr W.J. Johnston: Was any evidence —

Mr R.F. JOHNSON: I am not taking any more interjections from the member for Cannington. He is a pain in the whatsit.

The member for Forrestfield asked whether delicensing vehicles had been considered. That was considered. The member for Forrestfield used the word "delicensing".

Ms M.M. Quirk: I did not use that word.

Mr R.F. JOHNSON: The member for Balcatta made some good points yesterday but he is not here. He knows what they are.

Mr W.J. Johnston: So you will not read out the answer!

Mr R.F. JOHNSON: I will not help you out at all, my friend.

Once again, the member for Nollamara asked about delicensing vehicles as an alternative.

The member for Midland asked about the physical hardship. It means the same today as it did under her legislation. There is not a lot of difference. She was also concerned that the proposed maximum penalty for the offence of devaluing a vehicle that was the subject of an application for impoundment or confiscation was too low. The member for Midland brought in the figure of $2 500 when she introduced the legislation. If she thinks it is too low, she might want to move an amendment to increase the penalty. I think that probably covers all the important points that some members raised. I appreciate members' support for the legislation.

For the benefit of the shadow Minister for Police, I have been given a note about what the Liberal Party policy is. It was Liberal Party policy to investigate restricting the types of vehicle a novice driver can drive. The WA Road Safety Council was to be commissioned to conduct further research into the correlation between high-powered vehicles and crash risk. That was the Liberal Party policy. I want to help out the member for Girrawheen so that she knows all the details.

Someone else asked me what the cost of wheel clamping would be. It would be about $3 000 per clamp. As I said, it is a bad idea. People deflate car tyres and cars need to be moved et cetera. It would be a drain on police resources to do that. Wheel clamping was certainly considered but because of the points raised by the police and the Department of Planning, it was clear that that option would not work. It is simpler, more cost effective and more of a deterrent to take someone's vehicle and to store it for 28 days for the first offence than it is to leave it where it is. Clamps could be interfered with so that the owner could continue to drive the vehicle, and if the plates were removed from the vehicle, the owner could pinch someone else's licence plates and put them on the car and continue to drive. The hoons thumb their nose at the law. We want to take them off the road. If the only way to do that is to take their vehicle off the road for 28 days, that is what we will do.

I thank members for their contributions to this very important legislation. I am sure that opposition members will support the passage of this legislation because that is what they have been saying they would do. They have said that the nasty hoons are the number one issue in their electorates. Let us see whether the voting of the members of the opposition matches their rhetoric.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clause 1: Short title —

Mr W.J. JOHNSTON: During my speech on the second reading on Tuesday, the Minister for Police made 21 interjections, which is an average of one interjection every 90 seconds. During one of those exchanges with me, I was discussing the problems with hoons driving in the suburbs, and the minister said that this bill applies to a range of other drivers. In particular, while I was talking about hoons having their cars seized, the minister interrupted me to explain that other people might have their cars seized, such as people driving without a licence because of accumulated demerit points. As the minister pointed out during his 21 interjections on me—an average of one every 90 seconds—and given that this bill applies to a range of issues other than hoon behaviour, including the sort of behaviour that I talked about in my speech that people such as Dick Ketteridge from Lynwood find so objectionable, perhaps it would be a more accurate description of the bill if we took the word "hoon" out of the short title. When I was discussing the problem of hoons and the minister raised all these other problems that he is dealing with, I wondered whether this was a proper description of the purpose of the bill or whether it was evidence of the political grandstanding that the minister is so famous for. Was it just another example, as we have highlighted on a number of occasions during this debate, of the minister promising many things in opposition that he is not delivering in government? For example, he is not delivering on the police promise and he is not delivering on his promise to take high-powered cars off inexperienced drivers.

The ACTING SPEAKER (Ms L.L. Baker): I need the member to confine his comments to clause 1.

Mr W.J. JOHNSTON: I am indeed. I am trying to get to the nub of whether the minister is choosing to use political words in the short title of the bill. As I said, he made 21 interjections during my speech yesterday, which was one every 90 seconds. I do not think I was interjected on the most by the minister; I think the 21 interjections during my speech on the second reading were fewer than occurred during the speeches of other members. When we were discussing hoons, the minister kept trying to divert us and discuss other matters. Given that that is his view of this bill and that it is not really aimed at hoons but at all these other people, is there a better title for the bill than the one he has suggested?

Mr R.F. JOHNSON: It is quite obvious that the member for Cannington is hell-bent on delaying this legislation. I will make an agreement with the member: I promise never to interject on the member again if he does the same for me. I ask him whether that is okay. He obviously does not like being interjected on but he loves interjecting. Perhaps we could agree that I will not interject on the member if he does not interject on me. Is he happy to have that agreement?

Point of Order

Mr W.J. JOHNSTON: The minister is not addressing the bill; he is discussing matters that do not relate to the issue before the chair.

The ACTING SPEAKER: I ask the minister to return to his response to the member for Cannington.

Debate Resumed

Mr R.F. JOHNSON: As far as the title of the bill is concerned, this is the title of the bill and it will continue to be the title of the bill. All the rubbish that has just dribbled out of the member's mouth, quite frankly, is not even worthy of a comment.

Ms M.M. QUIRK: I, too, want to talk about the short title and continue on from the points made by the member for Cannington, which were quite legitimate. It is quite clear, as the minister said in his reply earlier today, that this bill effectively applies to all reckless drivers. It should really be entitled the "Road Traffic Amendment (Hoons and Reckless Drivers) Bill" rather than just including the term "hoons". It is quite clear that the bill is much broader and applies to drivers other than just hoons. Therefore, the title does not reflect those to whom it applies. It is a general principle of statutory drafting that those affected by legislation should be able to tell by its title that it applies to them so that they can make sure that they comply with those laws. We would contend that saying Road Traffic Amendment (Hoons) Bill solely simpliciter is not broad enough.

The minister said that it was a ridiculous idea that someone who was driving on the freeway while texting on a phone or putting on lipstick could not fall foul of this legislation. Clearly, that is reckless driving if there is an intent or serious indifference to the possible consequences of that driving behaviour. Given the circumstances and given that the minister has subsequently made the concession that the bill does apply to all reckless drivers, we contend that it should be called the "Road Traffic Amendment (Hoons and Reckless Drivers) Bill".

Mr M.P. MURRAY: I believe that the short title should read, "Road Traffic Amendment (Hoons) and the Imposition of Further Hardship to Third Parties Act 2009". As the bill is set out, many businesspeople will be disadvantaged, even when they have carried out checks on their drivers who may have had their licences suspended as a result of a fine or some other suspension. These businesspeople may not be quite sure about their drivers' licences even though they have done the checks. I do not think the bill covers those situations sufficiently. The financial disadvantage to a businessperson whose car could be locked up for a period has not been looked into in enough detail. I have had complaints from people in my electorate who say that they are doing the checks but that the notifications could be lost in the mail along the way so that a person is not notified that his or her licence has been suspended, and all of a sudden he or she loses his or her vehicle for up to 28 days. That is an impost on businesspeople. There should be a clearer and much more abbreviated system to allow these people to get their vehicles back quickly. We saw the much-publicised case in which a person was wrongly accused of not having a licence and the vehicle was locked up—it was a pie van; I do not know what happened to the pies. But it was an impost on that business for the day. I would like this issue to be cleared up so that these people have redress to get their cars returned immediately if there is some mistake.

The ACTING SPEAKER: I am sure that the member has a point to raise but I am not sure that it relates to clause 1, the short title, at the moment. There will probably be a more opportune time for him to raise his concerns as we go through the bill.

Mr R.F. JOHNSON: I am very happy to respond to the comments of the member for Collie-Preston. The member has raised some genuine concerns. However, what we are talking about here is the hoon legislation. The legislation that the member is referring to is the unlicensed driver legislation. That legislation was brought in by the former government. Unlicensed drivers are the ones whose cars will be impounded for 28 days if they are caught. In the cases the member has referred to—the Jiffy van, and the pump vehicle, which were commercial vehicles—the member is right. Those vehicles were impounded. One of those vehicles was released on hardship grounds. I think that, since that time, two vehicles have been released on hardship grounds, because if they had been retained as impounded vehicles it would have caused severe financial hardship to those small business owners. With the Jiffy vehicle, there is another story to come out about that, and I will deal with that at a later stage, not today. The legislation that the member is talking about is the unlicensed driver legislation. That is not what we are talking about here.

Mr M.P. Murray: But on a reading of the bill, it can be confusing. That is why I am saying we need clarity so that we know whether it is this or that.

Mr R.F. JOHNSON: I accept the member's concern. That is the concern that has been raised by quite a lot of people, particularly when a vehicle that is owned by a small business is involved. I think that the number of vehicles that are owned by a small business and that are used to commit a hoon offence will be extremely low.

Ms M.M. Quirk: But it is possible that it will apply.

Mr R.F. JOHNSON: Of course. However, the same clause will apply if the impounding of the vehicle will cause severe financial hardship to the owner of the vehicle. If a driver who has committed a hoon offence is not the owner of the vehicle, the owner can make a hardship application, and I suggest that that person will probably get the vehicle back. If a vehicle is impounded under the unlicensed driver legislation, it will certainly teach the

employer a lesson. An employer whose vehicle is impounded because the driver was unlicensed will probably want to get rid of that person, or will certainly take severe action against that person. I believe that employees have an obligation to inform their employers if they are unlicensed drivers. However, employers also have an obligation to ensure that the drivers of their vehicles are licensed drivers.

Mr M.P. Murray: But there is an anomaly there because —

The ACTING SPEAKER: Order, members! I am sorry to interrupt, but we do need to keep the debate to clause 1, the short title of the bill.

Ms M.M. QUIRK: Given that under this legislation a person can be treated as a second offender and have his vehicle impounded when he has not yet been convicted by a court for a first time, and given also that this bill will apply to all reckless drivers, I believe the short title of this bill should be the "Road Traffic Amendment (Alleged Hoons and Alleged Reckless Drivers) Bill 2009".

Mr R.F. JOHNSON: This is the last time I will be getting up on this clause, because I am not going to allow members opposite to filibuster this very important legislation through the Parliament. We have seen that at the second reading stage. If that is the intention of members opposite, people need to know that members opposite do not support this bill. If members opposite do not support this bill, they should vote against it. I am not going to waste the time of this Parliament by getting up every five minutes when members opposite make irrelevant statements about things such as changing the title of the bill.

Mr W.J. JOHNSTON: The arrogance of the minister at the table is extraordinary! The idea that the minister, and not the Parliament of Western Australia, gets to choose what is considered relevant is an outrage. For the minister to go on radio and accuse people of having no interest in this matter, and then not being prepared to respond to detailed issues raised by the opposition, demonstrates an arrogant attitude. It certainly demonstrates that the minister is incapable of performing the functions of his office. I have raised a very important issue. The minister interjected on me 21 times during that speech to make it clear to me that this bill applies not only to hoons, but to a whole range of other people.

Point of Order

Mr R.F. JOHNSON: Madam Acting Speaker, the member on his feet is once again talking about anything other than the title of the bill. I would ask that he be drawn back to that, because he is ignoring your instructions.

Mr W.J. JOHNSTON: On the point of order —

The ACTING SPEAKER (Ms L.L. Baker): Order! The member for Cannington does not need to comment. I actually think the member is addressing the short title of the bill, and I urge him to make his point.

Debate Resumed

Mr W.J. JOHNSTON: Thank you, Madam Acting Speaker. The point I was making before the minister interrupted me was very simple. The minister himself has said that this bill will apply to many, many people who are not hoons. Given that that is the minister's view, how can the Parliament pass this clause for the short title when that short title does not reflect the minister's opinion? This is the minister's bill. No-one else in this chamber is responsible for the minister's incapacity to explain why he has brought to the chamber a bill with a title that does not reflect his own opinion. The minister's own opinion is that this bill applies to a range of people other than just hoons. The short title of this bill should clearly reflect that, but it does not. I do not know what incompetence, incapacity or inability has led the minister to come into this chamber and not be prepared to include in the title of the bill its true purpose. However, that is the situation that the chamber is facing. It is not right for one second that the minister has gone to the media and has come into this place and has tried to intimidate members of the opposition into not pointing out his incompetence, not pointing out his incapacity and not pointing out his inability to reflect his own opinion in the bill that he has brought into this chamber.

Mr R.F. Johnson: Madam Acting Speaker, I will not be responding to that.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 23A amended —

Mr W.J. JOHNSTON: I would appreciate it if the minister would explain to me—because I was not able to hear the whole of his answer during his response to the second reading debate—the effect on compulsory third party insurance when the licence of a vehicle is revoked. The minister did make some comments about that, but I would appreciate the minister putting that on the record so that I can hear the answer to that question.

Mr R.F. JOHNSON: I thought I had made it quite clear in my response. Third party insurance is compulsory. It provides the driver of a vehicle with unlimited protection in the event that a claim for personal injury or death is made against him as a result of his negligent driving. It does not, however, cover the driver for damage to any vehicle or property. If a vehicle's licence is suspended and a person gets into that car and drives it, under the Motor Vehicle (Third Party Insurance) Act 1943 there is still a requirement to pay a victim—the complainant—if there is proof of negligence by the driver. However, this will establish grounds for a right of recovery from the driver. Basically, what that means is that the Insurance Commission of Western Australia will have to come up with the money and then seek a debt recovery from the driver. As I said earlier, if a person drives a vehicle that is not registered—which obviously then means the vehicle is not covered by third party insurance—and causes a personal injury to an innocent victim as a consequence of his negligent driving, the medical expenses of that innocent victim will be covered by ICWA. However, ICWA will not pay for damage to any vehicle or property. That is quite simple—it is third party personal injury insurance and it always has been.

About six years ago I queried this with the previous Attorney General, Jim McGinty, because I had a concern that innocent people might be disadvantaged if they are injured by somebody who is driving a vehicle that is not properly licensed and obviously not insured. I was relieved to hear then, and I am sure members of the chamber would be relieved to hear now, that that person would not be adversely affected in at least getting their medical expenses paid. They would not be out of pocket in that respect.

Clause put and passed.

Clauses 5 and 6 put and passed.

Clause 7: Section 78A amended —

Ms M.M. QUIRK: I have several amendments to this clause on the notice paper. I might deal with them cognately because I know that the minister's time is limited. I will provide one explanation for all the amendments that I am moving.

Leave granted for the following amendments to be considered together.

Ms M.M. QUIRK: I move —

Page 4, line 8 — To delete the line.

Page 4, line 27 — After "committed" insert —

in circumstances of aggravation

Page 5, after line 12 — To insert —

(6) In section 78A in the definition of ***circumstances of aggravation***:

(a) delete "or" after paragraph (e);

(b) after paragraph (f) insert:

(g) the vehicle, being a motorcycle, is driven in a manner in which the front wheel is lifted so that the vehicle balances on its rear wheel; or

(h) the vehicle is being driven to escape pursuit by a member of the Police Force;

I move these amendments because, in his second reading speech, the minister contended that there were logistical issues in proving these matters before the court. Their removal creates a real problem, which the minister has conceded; that is, it broadens out the scope of the offences covered by the legislation. By removing the circumstances of aggravation, the bill includes all instances of reckless driving covered by this legislation. That is far broader than what was intended; it is far broader than what the minister said the intent of the legislation was.

To digress, the minister said the intent of the legislation was about repeat offenders. Despite the figures he gave this morning, the bottom line is that, since the hoon legislation was first introduced in this state, about seven per cent of all offenders apprehended are repeat offenders.

It is intended to remove the circumstances of aggravation. It will be the situation that if this bill is passed unamended, all reckless driving will be covered. I do not think the community is aware of that. It is best to delineate what the circumstances of aggravation are. I ask the minister: how is this difficult in court? It has been a while since I prosecuted any traffic offences, but frankly I do not think it is that difficult to do. On top of that, two additional circumstances of aggravation have been included, which the minister said would not cover all circumstances. I accept that. I am referring to the two examples that the minister gave in his second reading

speech, which were not included in circumstances of aggravation. We have sought to include them so that it will be one less problem the police have to overcome.

These amendments are about keeping circumstances of aggravation in the legislation, keeping the focus of the legislation on hoon driving rather than all reckless driving and delineating what behaviour the community is supposed to guard against falling foul of this legislation by committing. It is reasonable. The argument for removing the circumstances has not in any way been advanced properly. There is some logistical difficulty in going to court. Yes, it is hard sometimes to get a conviction. That is the way it should be. We should not be saying to a person that he has a blue car, he is convicted and his car is impounded. It is the duty of the police to do a decent job in presenting a good case for why somebody should face the opprobrium and sanctions associated with being convicted and with having his car impounded for a substantial time. All those things mean that the proposed legislation is too broad.

The minister pooh-poohed the member for Mindarie's comments that a woman could be driving putting on lipstick and be guilty of reckless driving. At the risk of citing law, there is authority over many years on what constitutes reckless driving. It goes back to Kane v Duveau [1911] VLR 293.

Mr P. PAPALIA: I would like to continue to hear from the member for Girrawheen.

Ms M.M. QUIRK: It also includes Thompson v Copeland [1936] SASR 45; Lederer v Hitchins [1961] WAR 99; Andrews v DPP [1937]; and 2 ALL ER 552 at 556. Any case in which a driver is seriously indifferent to the possible consequences of his driving behaviour would constitute reckless driving. In all those cases those people would be covered by this legislation, once the circumstances of the aggravation provision is removed from this bill.

Mr R.F. JOHNSON: The government will not accept the amendments, and that will come as no surprise to the member for Girrawheen. The reason we are focusing on people who drive recklessly is that they are hoons and are a danger on the roads. If they wilfully go through a red light, it is a hoon offence.

Ms M.M. Quirk: What about text messaging while they are driving?

Mr R.F. JOHNSON: No; that is careless driving, not reckless driving. It is the same as the member for Mindarie said—I do not know why he picked on women; he could have picked on men. However, he said if a woman is putting on her lippie while driving she should have her car impounded. It would not be. Once again, that is careless driving. If people use their mobile phones by either texting or speaking on it, it is covered by an infringement and it is careless driving.

Ms M.M. Quirk: It should not be. It is more than careless driving. They are not paying attention to the road.

Mr R.F. JOHNSON: It has to be wilful. If somebody absent-mindedly picks up a phone because it rings and he suddenly realises he should not be doing that —

Ms M.M. QUIRK: I am talking about texting.

Mr R.F. JOHNSON: That is irresponsible driving and there are severe penalties for that.

Ms M.M. Quirk: Texting while driving would come under this legislation; is that correct?

Mr R.F. JOHNSON: It would have to be continual and dangerous to any other person. I would suggest that a woman does not continually put her lippie on all the way down the freeway. I would not think that would be the case. That is careless driving. I am tough on most of these things. The member might think I am being soft by not including those instances in the bill.

Ms M.M. Quirk: It might not be a momentary aberration, but a concerted effort.

Mr R.F. JOHNSON: They would certainly face a severe penalty. The member knows that use of a mobile phone is classed as —

Ms M.M. Quirk: It would be reckless driving, wouldn't it?

Mr R.F. JOHNSON: No; it would be careless driving.

Ms M.M. Quirk: Why wouldn't it be reckless?

Mr R.F. JOHNSON: Because it would be careless driving. It would be classed as careless driving.

Ms M.M. Quirk: It is serious indifference to the consequences or possible consequences, isn't it?

Mr R.F. JOHNSON: Yes; as I am advised, it would be careless or dangerous driving. There would be, we believe, no intent to drive recklessly in that way. A person who drives recklessly is a problem to other people—there is no question about that. That is why we say that reckless driving is hoon driving. Dangerous driving is wilful because it is done in circumstances of aggravation. But at the end of the day, I believe that we have before

us probably the toughest hoon laws and reckless driving laws in Australia. I make no excuse for that; I make no excuse whatsoever. We want to make it simpler for the courts, as well as police officers, to determine the facts. In future, a hoon will not just be someone who tears up his neighbour's, or another innocent person's, front lawn by doing wheelies or doughnuts. I know that all Labor Party members have received complaints about such behaviour. All of our members have received complaints about hoon behaviour. It will not just be the type of behaviour I have described; it will encompass some other behaviour as well. At the end of the day, we want to get those people off our roads for at least 28 days. If they do not learn the lesson after having their vehicle impounded for 28 days, confiscation for a second offence, under this legislation, will be for three months. I make no excuses for that whatsoever. We need to get those vehicles off the road if that is the only way that we can get those irresponsible and reckless drivers off the road. We are not after people who may be considered to be careless drivers. We are all guilty of careless driving because we can all be inattentive—even a conversation on a hands-free phone can mean we take our attention off the road. Some people may say that is careless, but it is not deemed to be reckless.

Mr P. PAPALIA: I have been listening to this specific part of the debate with great interest. I feel that the member for Girrawheen has identified a very interesting part of the legislation and an area worthy of attention. I understand the minister's advocacy of the legislation and of him as the toughest minister in Australia; I am sure that he is the toughest of the tough ministers that we have. But all that aside—and the election slogans aside—the Liberal Party is now in government and I think it beholden on the minister to take into account and to try to identify all the possible outcomes of the legislation that we are about to pass. Is the minister quite confident that the little anomaly identified by the member for Girrawheen—that is, the possibility that a police officer may in the future deem a driver on the freeway doing 100 kilometres an hour whilst "twittering" to be reckless—is not a problem? Is the minister confident that the general community's attitude will be to accept such behaviour being deemed hoon driving and the car subsequently being impounded for 28 days? I am just not convinced. I understand that it is difficult for the minister to consult as he stands in the house, but I am happy for him to receive advice in order to be able to provide me with a little more assurance that he is comfortable that all of the possible outcomes have been taken into account and that we are not going to see an expansion of the application of this particular legislation in practice, as opposed to in theory.

Mr R.F. JOHNSON: The circumstances of aggravation are irrelevant to the court, but are relevant to the police officer who is apprehending somebody. The police officer will have to make a decision as to whether the behaviour is classed as a hoon offence, be it careless driving, reckless driving or dangerous driving. Reckless driving is encompassed in the hoon legislation because we believe that that sort of wilful behaviour—that is, with intent—warrants a vehicle being impounded. The police officer will have the knowledge and the authority to impound a vehicle on the spot—that is, call the tow truck and get it towed away. The vehicle will be impounded. It is the responsibility of the police officer to know which of those breaches of the Road Traffic Act is involved—they are all breaches, be they careless, reckless or dangerous. We believe that reckless driving is the most irresponsible of the three because it is done with intent. We are including reckless driving as an impounding offence, but it does not matter to the court—it matters to the police officer. Somebody who picks up a mobile phone whilst driving and sends or receives a text message is not deemed to be a reckless driver. That is deemed to be careless driving.

Mr P. Papalia: But don't you think that it could be, in that sense?

Mr R.F. JOHNSON: There is no wilful intent to, for instance, go through a red traffic light.

I have just received some very good advice about "intent". There are three tiers: careless, dangerous and reckless driving. To convict someone of wilfully dangerous driving, it has to be proved that there was intent to drive dangerously, which is very different. In the example of someone sending a text message: did the person intend to send a text message or did they intend to drive dangerously? I would suggest that in that example a police officer would decide that the intention was to send a text message, not to drive dangerously. There is a subtle difference. This gives our police officers —

Ms M.M. Quirk: It is too subtle for me, minister.

Mr R.F. JOHNSON: Is it?

Ms M.M. Quirk: Yes.

Mr R.F. JOHNSON: No; the member for Girrawheen is a lawyer. She has a law degree; nothing would be too subtle for her! I am sure that the member understands this perfectly well.

Ms M.M. Quirk: I do not understand your explanation.

Mr R.F. JOHNSON: I am sure that the member for Girrawheen understands my explanation, because she is a very intelligent person. I did not exactly understand all of this when the Labor Party brought in its legislation. I had to go into great detail to find out—I had to start digging.

Ms M.M. Quirk: And we did not begrudge you that time, labouring through the detail.

Mr R.F. JOHNSON: Yes, you did! I remember that debate on quite a few clauses was gagged.

I hope that my comments have explained this clause to the member.

Mr C.J. TALLENTIRE: There is an element here that is, I think, being glossed over. I was disappointed not to hear something about it from the minister when he responded earlier to members' concerns. The two things that I am referring to are related—that is, excessive acceleration and excessive noise. A hoon who goes from zero to 60 kilometres an hour in a very short space of time may not break the speed limit but may cause his vehicle to emit an excessive amount of noise. When I talk to my constituents, their number one concern when it comes to hooning is excessive noise. They are sick of their otherwise peaceful neighbourhoods being polluted—being "aggressed"—by these noises. The explanatory memorandum says that anyone "wilfully driving a motor vehicle so as to cause excessive smoke or noise" will be covered by this legislation. I expect that if the minister has included that comment in the explanatory memorandum, he has probably included it in public statements to the community. The minister has led everyone to believe that the government is getting tough on hoons who "aggress" neighbourhoods with excessive noise, but the legislation has no changes that will make that an offence—that will make it possible for someone to be picked up for this very rapid acceleration and excessive noise. I think there is adequate scope for changes to be made under section 62A. At the moment, section 62A(a) refers to "excessive noise to be made with one or more of the vehicle's tyres". I would suggest that by including a new subparagraph (c) that says "excessive noise from a muffler system that does not conform to the motor vehicle standards" would make it very easy for police to act on these offences.

The ACTING SPEAKER (Ms L.L. Baker): Member, are you speaking to the clause or the amendments.

Mr C.J. TALLENTIRE: Indeed I am because this is the opportunity for us to make sure —

The ACTING SPEAKER: We are speaking to the amendments that have been tabled, not to the clause itself.

Mr C.J. TALLENTIRE: I will bring it to the amendments. This is an opportunity for it to be inserted into the amendments.

The ACTING SPEAKER: If the member would wait until we get through the amendments, he is more than welcome to bring up these issues when we address the clause.

Mr W.J. JOHNSTON: The minister's answer was not clear and I want to get clarity. Is the minister referring to somebody who accelerates through an orange light and the light turns red while that person is transiting as a hoon, or is he referring to some other situation in respect of a red light? I do not know that the community would see all those things as hooning. I imagine many people who have committed that offence would not consider themselves hoons. I am not forgiving them for that offence, but whether the appropriate penalty is to take the person's car for 28 days is not clear to me.

Mr R.F. JOHNSON: Earlier I mentioned the example of someone who goes through red light after red light. That is intentional, and that is a hoon offence. If somebody goes through a red light, and it is not intentional, they will still get pinged for it obviously, but they will not receive a summons under the hoon legislation.

Mr W.J. Johnston: It is two o'clock in the morning and someone goes through a red light; there is no question—it is intentional. Is that hooning?

Mr R.F. JOHNSON: It has to be dangerous driving.

Mr W.J. Johnston: I am asking whether it is dangerous.

Ms M.M. Quirk: There is a wilful intent to go through the red light and to be reckless as to the consequences.

Mr R.F. JOHNSON: To be reckless, it has to be dangerous to somebody else.

Ms M.M. Quirk: One has to be indifferent to the consequences.

Mr R.F. JOHNSON: That is one way to put it.

Ms M.M. Quirk: That is the way the judges put it.

Mr R.F. JOHNSON: That is how the member has put it. It would be dangerous, but the intent must be to endanger somebody else. As members know, the highest number of traffic accidents occur at intersections.

Mr W.J. Johnston: What is the answer?

Mr R.F. JOHNSON: I thought I did answer the question.

Mr W.J. Johnston: Is it a hooning situation—yes or no? It is a pretty simple question: one answer is yes the other is no. The minister can cope with that, I am sure.

Mr R.F. JOHNSON: If they go through a set of traffic lights, and if it is done wilfully, it is a reckless act. Police must consider whether it will endanger somebody else. If there is a wilful intent to go through a red light and endanger somebody else, that is reckless driving.

Ms M.M. Quirk: It is covered then?

Mr R.F. JOHNSON: It will be covered under the hoon legislation.

Mr W.J. Johnston: I would be happy if the minister would say, yes, it is covered.

Mr R.F. JOHNSON: I have said that. Is the member happy now?

Mr W.J. Johnston: The minister has not, as he keeps trying to qualify what he says.

Mr R.F. JOHNSON: In those circumstances, it would be. If it is in the middle of the night and nobody else is around, it would be dangerous driving, or it could be an infringement for running a red light; it would not be classed as a hoon offence.

Mr W.J. Johnston: When would it be classed as a hoon offence?

Mr R.F. JOHNSON: When someone else is endangered, and there was intent.

Mr W.J. Johnston: If it was at night and nobody else was around, it would not be a hoon offence? But it is covered; that is what I am trying to get at.

Mr R.F. JOHNSON: Yes.

Ms M.M. QUIRK: I think the dialogue the minister has had, certainly with the members for Warnbro and Cannington, illustrates why we need the amendments. By including the circumstance of aggravation, we would clearly delineate what conduct is and is not covered by the law. We would be leaving people in no doubt as to when they are infringing this act. The difficulty with taking it out is that we will have arguments, and police will be left in that kind of grey area wondering whether this legislation covers them. The minister has illustrated by his answers that he is confused. How is it that the general public cannot be confused?

In the second reading speech the minister said "these circumstances of aggravation create significant logistical problems". I want some idea of what they are. The third thing that I want to raise in this context relates to the continuum: careless or negligent driving, dangerous driving, and reckless driving. Potentially, some of the conduct we have referred to could be reckless as opposed to dangerous and careless, and therefore would be covered by the legislation.

Mr R.F. JOHNSON: They are only relevant to the officer at the roadside and whether the police can impound a vehicle in relation to the offence they will be charged with. I hope this passage that I will read to the member will clarify the issue: When it is clear that all reckless driving offences are hoon offences, it will be possible to determine whether an offender is a second or subsequent offender and liable for the more onerous sanction that goes with that status. Presently, when an offender is convicted of reckless driving by a court, it is not relevant to the court whether the offence was committed in circumstances of aggravation. The circumstances are relevant only to determine whether a member of the police force may impound the vehicle at the roadside. That is the relevant point. The court is only concerned with whether a reckless driving offence or a dangerous driving offence occurred, and conviction records do not therefore indicate for police whether a particular reckless driving or dangerous driving conviction is a hoon offence.

Ms M.M. Quirk: When the police make the application to confiscate, they currently need to allege that these circumstances exist.

Mr R.F. JOHNSON: We cannot make an application to confiscate until we can identify that the previous convictions were upheld. This means that the figures I gave earlier are probably just the tip of the iceberg. When we talk about repeat hoon offenders, there are more. Did the member understand what I read out?

Ms M.M. Quirk: It is not the question I asked.

Mr R.F. JOHNSON: What was the question?

Ms M.M. Quirk: I asked several questions. The minister's response was that it is for the purpose of determining whether impounding or confiscation is warranted.

Mr R.F. JOHNSON: To be impounded initially, the officer at the roadside must know whether or not the vehicle should be impounded.

Ms M.M. Quirk: Now that the officer is not fettered by these circumstances of aggravation, he can make that decision to impound if he forms a view that there is reckless driving in all its forms.

Mr R.F. JOHNSON: The advice I am given is that, in the first place, the offence must be described as either reckless or dangerous. We are looking at circumstances of aggravation—not an element of a reckless offence. That will give the officer the power to impound the vehicle. Does the member understand that?

Ms M.M. Quirk: Yes.

Mr R.F. JOHNSON: I know she does.

Debate interrupted, pursuant to standing orders.

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