

CRIMINAL CODE AMENDMENT BILL (NO. 2) 2009

Second Reading

Resumed from 19 November.

HON KEN TRAVERS (North Metropolitan) [12.16 pm]: I rise on behalf of the opposition to indicate to the house that we will be supporting the Criminal Code Amendment Bill (No. 2) 2009. We are dealing with this bill in the dying days of this Parliament, it having been introduced into the other place only about a week ago. It passed through that house in record time. That highlights a government that is either completely incompetent or completely uncaring, one that has only reacted to these important matters because an opposition has forced it to do so. I will go through the history of this legislation and the legislation that we have dealt with since the government started to look at this matter. Government members should tell me whether they think that the bills that we have passed up until now are more important than this very important matter.

Hon Simon O'Brien: That's an invalid question, and you know it is.

Hon KEN TRAVERS: No, it is not.

Hon Simon O'Brien: There are matters of drafting and consultation and a range of other things.

Hon KEN TRAVERS: I say to the Leader of the House that that is what happens when provocation occurs.

Let us look at a bit of the history of this legislation.

Hon Nick Goiran: Just remind me who's doing the provoking.

Hon KEN TRAVERS: I am just stating the facts. Members opposite may want to prolong the debate but I want to put the facts about this bill on the table and then we can pass the bill. As I indicated to the house, the opposition supports this bill. I want to explain to the house why we support the bill and I want to make some comments about the incompetence of the government and cabinet in the way it has dealt with the very important issue of rocks being thrown at buses and laser pointers being directed at vehicles and, more predominantly, at aircraft.

The history of this matter is interesting. I obtained some fascinating documents from the government through a freedom of information application. One of the first documents I received highlights an incident that occurred in October last year. Wilson Security and the Public Transport Authority were very upset that the police advice was to issue the youth involved in this incident with a fine, and no-one was taken to task over the assault of the officer. They were complaining about the very limited reaction that occurred when these very serious matters were going on. More importantly, on 14 January 2009 correspondence between Western Australia Police and the Department of Justice indicated that WAPOL was very keen to push the Criminal Code reforms on laser pointers and rock throwing. It was on the agenda back in January this year. The number of incidents increased during the year. Interestingly, when these matters arose in the media back in April, internal documents obtained under FOI indicated that some of the senior government people had not picked up that there had been a significant spike in events, even though those out on the ground—the people driving the buses and the security officers—had picked it up. It had not filtered up into the system. People thought it was a bit of a stunt that was being put forward by the union at that stage. I have to say that the guy who I think has to be given the credit for this is a relatively new organiser at the Transport Workers Union by the name of Kevin Starr. He realised the problem that is occurring with these incidents. Even though the government has been talking about this problem since January, a massive spike has occurred in the number of incidents of rock throwing at buses. Kevin Starr picked it up even before senior management of the department, and the minister, were aware that this was an issue. They were trying, at that stage, to suggest that it was nothing more than a bit of a beat-up and the union playing games. During the estimates committee hearings of this house, we discovered through questioning and hard evidence that there has been a dramatic increase—some 37 per cent—in the number of incidents of rock throwing at buses. The number of incidents on buses is now up to around 1 300 per annum. We discovered that there has also been a dramatic increase in the number of incidents of rock throwing at trains. The number of incidents on trains is now up to over 100. I have a very telling graph that members might want to look at. It outlines the incidence of broken glass in Transperth's rail operations. That graph highlights the significance of this problem. That was in June.

Hon Michael Mischin: When did that graph start? Where is the zero for the number of incidents?

Hon KEN TRAVERS: It started on 23 September 2008. That was provided to me under freedom of information. I did not produce it. That graph was produced internally by Hon Michael Mischin's government.

The estimates committee has highlighted that this problem exists. The spate of incidents has continued. It has become an epidemic in our community. The government has said that it will respond, but it has been a bit slow to act. Therefore, as an opposition, we have been on the front foot and have put forward a five-point plan for how we can address the dramatic spike in this antisocial behaviour that has occurred under this government. I

have to say this: I am not blaming the government for that, but this has occurred on this government's watch. Therefore, the government definitely needs to respond, and respond quickly.

The first point in our plan is that we need to ensure that the buses that are used late at night have safety cages for the drivers. We also need to introduce duress alarms back into the buses. The reason I am aware that duress alarms used to operate on buses is that I used to drive buses. I understood as a driver how good it was to know that I could hit the duress alarm, and I would get support. In the days when I was driving buses, when I hit the duress alarm, I had to try to indicate to the depot by conversation where I was located, because the bus did not have a global positioning system. These days, every bus has a GPS, so when the driver hits the duress alarm, the depot knows exactly where the driver is and is able to provide the assistance that is required. In the days when I was driving buses, I was comforted by the fact that I had that duress alarm. So, we put that into the equation in our plan. I think I was the first person to raise the idea of putting duress alarms back into the buses. It amazed me when I talked to the bus security officers and the bus drivers to learn that duress alarms had been taken out of the buses. It turned out that they had been taken out because of the privatisation of the bus service. This highlights one of the problems,

Hon Michael Mischin: What did you do about it for seven and a half years?

Hon KEN TRAVERS: To be honest, Hon Michael Mischin, I was not aware that this had occurred until I talked to the bus drivers about their duress alarms and they told me that they did not have them any more; they had been taken out when the bus service was privatised by members opposite.

Hon Michael Mischin: When did you find about it?

Hon KEN TRAVERS: When I spoke to the bus drivers and the bus security officers.

Hon Michael Mischin: When?

Hon KEN TRAVERS: It was in the middle of this year. I cannot be precise on the date. I went to a meeting. I can describe it to Hon Michael Mischin. I was invited to a meeting of Transperth bus security officers by their union representatives, because they were concerned about the dramatic spike in this antisocial behaviour. I attended that meeting as part of the general discussions that we were having about how we could fix this problem. I do not know whether Hon Michael Mischin has gone out and talked to the workers. Has he? Has he been out there?

Hon Michael Mischin: You didn't do anything about this for seven and a half years!

Hon KEN TRAVERS: This is the problem. I have made it clear that I am not blaming the government for the spike. I am pointing out there has been a dramatic spike in the number of these incidents since this government has come to power. That is what has prompted the need for everyone to focus on this issue. Although I have already pointed out the government was talking about this back in January, we responded as soon as the focus came on and this matter was brought to our attention. There are often issues that we do not know about until they are brought to our attention, because I am sure that not every member in this chamber knows everything about everything. That is when I was discovered that there are no duress alarms in the buses, and that is when I suggested that duress alarms be put back into the buses.

It is clear also that we need to engage in a blitz and take a zero-tolerance approach to this antisocial behaviour that is running rampant in our community. This is not just an issue in lower socioeconomic areas. I found when I did an analysis that the electorate in Western Australia that has the highest incidence of rock throwing at buses is—can anyone guess?

Hon Ljiljanna Ravlich: Peppermint Grove!

Hon KEN TRAVERS: Very close. It is the minister for Police's own electorate—the seat of Hillarys. That is a relatively well-to-do area, as members opposite know. It is not a low socioeconomic area of the state. However, that electorate is at the top of the list. This antisocial behaviour is becoming an epidemic. It is clear that if we are to take this zero-tolerance approach, we need to not only put on extra train and bus security officers, but also make better use of the existing security officers. So that is one of the points that we raised in our five-point plan.

The second point in our plan is that we need to introduce legislation to deal with this problem. We have called on the government to introduce that legislation, and we have made it very clear that the opposition is ready to support the government in that legislation. It is clear that the existing legislation is inadequate and ineffective. We have been receiving consistent complaints from the security officers that they will catch the kids who are committing this antisocial behaviour, and they will take them to the police, but the police will not do anything about it. The reason the police will do nothing about it is that it is too difficult to get a conviction under the existing legislation, because the police need to prove the intent of the child when the child threw the rock. We need to make it clear that the act of throwing a rock at a bus is a dangerous act, and it is punishable at law. There

should not be a need to prove that the person who threw the rock intended to hurt another person. The very fact of throwing the rock means that the person is engaging in risky and dangerous behaviour. It is very unfortunate that a serious injury was sustained by Mr Sin, the bus driver who was injured in Armadale. We have been very lucky in this state, considering the spike in the number of incidents, that there has not been a greater number of serious injuries —

Hon Phil Edman: Did you have rocks thrown at you when you were driving a bus?

Hon KEN TRAVERS: No, but I had a partner who had a rock thrown at her car many years ago, and I realise the trauma that rock throwing causes. When I was a bus driver, I certainly felt uncomfortable and uneasy about some of the people on the bus, but I can tell the member that my view is that it is a lot worse now than it ever was when I was a bus driver.

The third point is that we need to establish a parliamentary inquiry to give members of Parliament the opportunity to examine this matter in a bipartisan way, to call in experts, and to look at how we can better utilise resources. A range of issues are involved. There are currently separate security systems for buses and for trains. The people who are involved in this area have made it clear to me that we need a better integration of these two security systems. That is one area that a parliamentary inquiry could look at.

We can look at the law and order issues in two ways. We can be tough on crime and bring in legislation to ensure that tough penalties are in place for the people who commit this antisocial behaviour—that is what we are doing today—but we also need to be tough on the causes of crime. If people commit this antisocial behaviour, they deserve to be convicted. However, we also need to look at how we can prevent the crime from being committed in the first place. We need to understand why this behaviour is occurring and why this dramatic spike has occurred, and look at what we can do as a Parliament to address that situation. Therefore, I wrote to the committee that I thought was the most appropriate committee in the Parliament to deal with this matter. That was a committee of the other place that deals with transport matters. I asked that committee to look at this matter. I have to say that I was very disappointed when I got a response from that committee saying that it was not interested in conducting such an inquiry.

Hon Nick Goiran: Which committee was it?

Hon KEN TRAVERS: It was the Economics and Industry Standing Committee, chaired by the member for Riverton.

I have copies of the letters, although I do not have them with me, and I am quite happy to show them to members. I was very disappointed, because I believe that the safety of our community is one of the most important issues. There is no doubt that there was a dramatic increase in antisocial behaviour.

Hon Ed Dermer: Not only are they jeopardising the bus drivers, they are also endangering all the other passengers on the bus.

Hon KEN TRAVERS: They are also endangering other road users. It is just a dangerous, stupid and idiotic act. I cannot describe it any other way. There was also the broader issue of antisocial behaviour on the buses. I thought it was important that, as a Parliament, we try to get ahead of that. That was one of the key elements—addressing the underlying causes to try to prevent this behaviour, rather than concentrating on the other measures, which are all about addressing the symptoms rather than the causes.

Hon Ed Dermer: Both of those objectives can be pursued at the same time.

Hon KEN TRAVERS: Absolutely, and it is in this area in which backbench members of Parliament have a really useful role, because we can get out there. I accept that ministers do not have the time or the capacity to go to the level of detail that a backbench committee can do in examining this issue and making a significant contribution. I have done that in committees in the past, and it is a very worthwhile exercise. I am very disappointed that that inquiry did not occur, but I will continue to pursue the argument. At the time that I wrote to it, the Economics and Industry Standing Committee was finishing off an inquiry. I could not think of a more important issue for that committee to deal with, but the committee chose not to deal with this matter, and I was very disappointed about that. I will continue to pursue the issue, and if necessary bring a motion into this place in the new year to see whether we can get one of our committees on the job. The sort of inquiry I was considering would probably require a specific reference from the house rather than the committee itself taking it on, because of our terms of reference. I am not sure whether any one committee has the terms of reference I would be hoping for to look into these matters.

I am also disappointed that we are dealing with this bill after it has been raced in, and we have not had the opportunity to look at the detail, although we support the principle. When I consider some of the legislation that this house has passed this year, and the bills that are being given higher priority than this one, I find it very disappointing. If we accept that the Criminal Code Amendment (Graffiti) Bill 2009 would have an impact, that

bill dealt with property, whereas this one deals with life. That is why this bill should have been given a higher priority by the government. We released our five-point plan back in July or August, and before Parliament broke for the winter recess the government indicated that it was working on this measure; it would be a priority during the break, and legislation would be introduced after the winter recess. It took the government until the last scheduled sitting week of the year to introduce that legislation.

I believe that the government introduced legislation only because the Labor Party forced its hand by introducing its own legislation. We gave up waiting for the government to get on with this matter, despite its constant assurances that legislation was coming. We realised that the issue was important, so we introduced a bill that would have been able to be dealt with, with each house having at least a week to consider it before it went on to the next stage, and passed through the house before the summer break. The government did not do that. In fact, when we announced our private member's bill, the government was still unable to give a commitment to have its bill introduced before the end of this year. I think when the government saw that we had introduced a good bill, which it would find very hard to oppose, the government knew the only way to proceed was to introduce its own bill. We have noticed that when the opposition introduces a private member's bill, the government refuses to accept it and defeats it; the government then brings in its own legislation in a casual manner a little bit later, and tries to deal with the issue at that point. The government's bill will do exactly the same thing as the opposition's bill, but the government wants to be able to claim credit. On this occasion we achieved our purpose because we forced the government to introduce its bill and to make sure that this issue was dealt with before the house adjourned for the summer recess, so that the drivers, security officers and users of public transport, along with other road users, have the protection they deserve, which has been lacking in Western Australia.

It is interesting to compare the legislation that has passed through this place, other than this legislation, to get a real insight into this government's priorities. The government brings in quick and easy bills that are about spin and trying to pretend the government is doing something when it is not. But when it comes to a bill such as this one before us, which is about something substantial, the government is slow to move and only acts when it is forced to do so.

The person who can truly stand up and take credit for this legislation being dealt with by the Parliament this year is Kevin Starr from the Transport Workers Union, who has represented his members—both the security officers and the drivers—with distinction. He is a relatively new organiser of the union, but he has really got out there amongst the members. It is fascinating to watch him working with the members. He is a former bus driver himself, and he has a great rapport with the members. He is able to pick up these sorts of issues and get ahead of the game and point them out to people.

Hon Ljiljanna Ravlich: You were also a great help, honourable member, I have to say. I place that on the public record.

Hon Robyn McSweeney: Are you taking credit?

Hon KEN TRAVERS: No, I am not. I appreciate the comments of Hon Ljiljanna Ravlich. I have done the job that I am required to do as a member of Parliament. Kevin Starr was the person who brought this issue to the attention of the public, when others did not realise it was a problem, and he has pursued this matter with absolute distinction and with one motivation—to protect the community of Western Australia. That was his sole motivation, even though others suggested otherwise at various stages in this debate.

I could go through the pile of correspondence that shows that this issue has been floating around for some time and has been brought to the attention of the government. I have copies of letters from one of the bus operators highlighting the significant costs it was incurring. In June of this year, it was experiencing something like 25 attacks.

Hon Michael Mischin: June this year—that long ago.

Hon KEN TRAVERS: This is a telling statistic for Hon Michael Mischin. The year before that, the company was talking about five to seven rock throwing incidents a month. By June this year the number had jumped to 20 to 25. This is the bus company that services the electorate of Hillarys, which the member and I know well. It highlights the dramatic increase in this kind of behaviour occurring out there. A very comprehensive letter was written to the Attorney General, Hon Christian Porter, back in June, with graphic photos and statistics about the cost, highlighting all the issues and the need for this legislation. It is interesting reading the smart comments that we see when we get documents under freedom of information. I cannot remember the exact wording, but one of the staffers wrote that they would put out this document so that the government would get credit and not the opposition, and that the minister's office would get something out into the media very quickly to kill this issue off. That was the spin that was occurring.

If the parliamentary secretary can provide satisfactory answers, we may be able to avoid the committee stage for this bill. I understand that this bill went through seven drafts before it reached this Parliament. I would be

interested in knowing when those seven drafts occurred, and what the significant changes were between the drafts that have caused the bill to take so long to get into this place. I would also like an explanation from the parliamentary secretary about the basis on which the seven-year penalty was chosen. Normally there is a basis to these sentences, so I would appreciate some explanation from the parliamentary secretary about how the seven years was arrived at. I do not quibble about that. In our bill, the penalty was two years if the offence was about affecting the safe operation of a vehicle, and five years for jeopardising the safety of the person. The government has gone with seven years.

Hon Nick Goiran: When you say “our bill”, do you mean the private member’s bill?

Hon KEN TRAVERS: Yes, the private member’s bill introduced by the opposition.

Hon Nick Goiran: How many drafts did it go through?

Hon KEN TRAVERS: Probably two or three.

Hon Michael Mischin: Yes, it wasn’t any good.

Hon KEN TRAVERS: I could almost have predicted this debate. I knew this was going to be the case. I know that the bill is being debated in this place today because the government was finally forced to act. It knew that the opposition’s bill would stand up to scrutiny. Our bill was based on the best elements of the New South Wales and Queensland legislation.

Hon Michael Mischin: They effectively replicated the current law.

Hon KEN TRAVERS: I knew that we would get into this debate. The point is that we finally got the government to act. One would expect the government, with all its resources, to produce better legislation than the opposition can produce. We produced very capable and competent legislation that would have dealt with the matter. Although our bill will never come into operation, we can proudly say that we brought legislation to Parliament and we forced the government to get off its backside, stop talking about it and finally do something. We introduced our bill at a time that would have allowed it to be properly scrutinised by both houses of Parliament. At that time the Attorney General said that he was not sure whether he would be able to introduce a bill before the end of the year. It came as no surprise that when the Attorney General saw our bill, he very quickly lodged a bill so that it could be introduced and dealt with in this house. I congratulate the government for being responsive in that regard. The people of Western Australia know the sad history of this affair and the laziness of the government. Western Australia now has a good opposition, which it did not have in the eight years of the previous government. We are keeping the government of the day accountable and ensuring that it addresses the important issues.

Several members interjected.

Hon KEN TRAVERS: I have a very simple position on these matters. We are first and foremost members of Parliament and we have an obligation. Although we all aspire to be in government, it is not just about being in government. Members of Parliament have an obligation to stand in this place and do the job that is expected of them. One of the jobs expected of opposition members is to hold the government to account, and we will continue to do that. Members opposite will hear this theme from me quite often, because backbenchers need to learn that they also have an obligation to hold the government to account. They may not do that in the chamber as often as opposition members do, but they need to do it. Members will hear a bit about that later today when we debate the Perth Parking Management Amendment Regulations (No. 2) disallowance motion. I put to this house that government backbenchers have failed to impose on the government the checks and balances that the people elected them to impose. That is the job that I will continue to do. It was a job that I did when I was in government and it is a job that I will continue to do now that I am in opposition. If members do not want to accept my arguments on this bill, I am more than happy to go into committee and read to this place all the correspondence I have received and all the written literature that proves the point that I have been making that this government has not responded to this issue in a timely manner. It responded only because we put pressure on it.

I am yet to decide whether we need to go into committee; I will wait to hear the response from the parliamentary secretary. I want a very clear explanation of how the provision to create an offence of causing fear or alarm to people will operate. I know that the term “fear” is used in the Criminal Code. I look forward to an explanation from the parliamentary secretary about how that provision will operate. I look forward to the explanation about the drafts and an explanation about the basis on which the penalty of seven years’ imprisonment was arrived at. That is not to say that I oppose that provision; I just want an explanation from the government about how it arrived at that penalty.

With those comments, I commend the bill to the house. But I again reiterate that the processes by which this bill has arrived in this house are less than satisfactory. I hope that the government will in future, firstly, respond to the matters that are important to the community and, secondly, get legislation into Parliament in a timely manner that provides for proper scrutiny. Even legislation that is supported by all parties deserves proper scrutiny in the house of review, particularly as the government has claimed that this is a new concept in the way in which this and other matters in the Criminal Code will be dealt with. The government has an obligation to ensure that members in this place and members of the community understand new concepts and that the legislation can be used to provide the protections that the people of Western Australia deserve.

HON GIZ WATSON (North Metropolitan) [12.45 pm]: I rise to make some comments about the Criminal Code Amendment Bill (No. 2) 2009, which amends the Criminal Code with regard to offences that involve throwing objects at or placing objects in front of vehicles and also the use of laser printers —

Hon Michael Mischin: Pointers.

Hon GIZ WATSON: What did I say?

Hon Michael Mischin: Printers.

Hon GIZ WATSON: Oh, my goodness!

Hon Ken Travers: You tend to throw them rather than point them.

Hon GIZ WATSON: That is a worry. I have obviously been here way too long today! Laser printers are more common than laser pointers.

Hon Liz Behjat: And you can't throw them either!

Hon GIZ WATSON: Laser printers? Let me tell members that, yes, they can be thrown.

Hon Ken Travers: The Greens could probably table one as well if you asked them!

Hon GIZ WATSON: No, that is only fax machines. I thank members for the correction.

The bill purports to address the growing number of incidents in which rocks have been thrown at buses or cars, often with the consequence of serious injury to the driver and passengers. It introduces a new offence of causing fear or alarm to people in conveyances and others, which offence carries a penalty of seven years' imprisonment. The bill also amends the penalty for an offence under section 304 of the Criminal Code, which relates to acts or omissions causing bodily harm or danger. That penalty will be changed from five years' imprisonment to seven years' imprisonment.

The Greens (WA), like everybody else, are concerned about the escalation in these sorts of offences that honestly have the potential to have exceedingly serious consequences for people in the vehicle or others in the immediate area. Throwing rocks at moving vehicles is never a good idea, and putting obstacles in their path is exceedingly dangerous. But we are reluctant to support this bill. We argue that laws already exist to deal with rock-throwing incidents. Rock throwers can and do face tough penalties under existing laws, including the offence of causing criminal damage under section 444 of the Criminal Code, which provides for a penalty of three years' imprisonment or a fine of \$36 000, and the offence of causing damage to property, which is provided for in section 445 of the Criminal Code. The term "grievous bodily harm" is defined in the Criminal Code and means any bodily injury of such a nature as to endanger life or be likely to endanger life or to cause or be likely to cause permanent injury to health. The term "bodily harm" refers to the likelihood of an injury that interferes with health or comfort. Section 294 of the Criminal Code addresses offences that are likely to cause grievous bodily harm. Causing bodily harm or danger is an offence under section 304 of the Criminal Code. In our view, legislation already exists that deals with offences related to throwing objects at vehicles.

This rock-throwing phenomenon is not a new issue; it has been around for some time. Various attempts have been made in other states to address the issue. I took some time to look at how this issue has been tackled in other states, particularly New South Wales and Queensland. An article in the *Daily Telegraph* of 22 October 2007 reads in part —

ROCK throwing has reached epidemic proportions across NSW, forcing the State Government to establish an inter-agency task force to tackle the problem.

I listened with interest to the comments Hon Ken Travers made in that regard. If there is one thing that we agree with, it is the need to have a task force or parliamentary inquiry or an attempt by stakeholders and cross-government agencies to deal with the cause rather than deal with it by imposing increased penalties. We are experiencing a lot of copycat behaviour. A sudden spike of behaviour that is usually manifested by young boys—they are the most likely cohort engaged in rock throwing behaviour —

Hon Ken Travers: There is an element of copycat and an element of culture. In particular areas it becomes a part of the culture of gangs or groups.

Hon GIZ WATSON: That is exactly the same phenomenon. Cultural behaviour is copycat behaviour.

Hon Ken Travers: I agree with you. When you talk to the drivers, there is no doubt that when there is a spike in an area, the problems in that area blossom. That is your argument about the copycat offenders.

Hon GIZ WATSON: That is right. Groups of children or young people are engaging in escalating daredevil activities without, I hazard to guess, contemplating the consequences of their actions. That is very common behaviour among teenagers. Following extensive consultation and debate, Queensland and New South Wales have introduced more severe penalties for the offence of throwing objects at vehicles. That included the interagency task force. New South Wales passed the Crimes Amendment (Rock Throwing) Bill in 2008. The question is whether these changes in the law have made any difference. Queensland has introduced similar legislation. I refer to an article in the *Brisbane Times* entitled “Rocks in their head as bus attacks surge”. It is dated 17 November 2009 and states —

Brisbane City Council buses have seen a 16 per cent rise in rock-throwing and slingshot attacks in the past year, figures released to brisbanetimes.com.au have revealed.

...

A Council spokesman last night said there had been 236 rock and slingshot incidents involving buses since January 1 this year and the end of last month.

This was 33 higher than the number of incidents recorded over the same period last year, he said.

According to this article, other Queensland measures to address rock throwing include the installation of forward-facing cameras, anti-shatter glass, security personnel on the NightLink service and a security vehicle that trails bus services on some late-night services. They are all good initiatives. Later in my contribution I will touch on whether there are plans to introduce similar measures in Western Australia. I understand that we are testing having a security vehicle trail a bus. Are some of these other measures also contemplated for Western Australia?

I believe that South Australia has taken a different approach. On 28 September 2005, the chief executive officer of the South Australian Department of Education and Children’s Services raised the awareness of school students by sending a message about the impacts of rock throwing to all students. Unfortunately this debate will occur in a very condensed time. It would be interesting to know what the result has been in South Australia, which has taken a more educative approach to the phenomena of rock throwing and to determine whether this issue is escalating in South Australia. It appears that the only approach the Western Australian government has taken—I am happy to be corrected if it is not the case—is to increase the penalties and to make changes to legislation to broaden the number of offences. The bill demonstrates that the government, it seems to me, is unable to deal with the crime of rock throwing. I note a similar debate in the New South Wales Parliament during which my colleague Ms Lee Rhiannon pointed out the following —

It is not a failure in law; it is a failure to manage the problem. Current laws are not preventing rock throwing and neither, necessarily, will more harsh laws—the same way capital punishment does not prevent murder.

It seems to me that we need to get some of the key players together to look at a preventive approach. Perhaps the parliamentary secretary can tell us whether anything of that nature is intended. I have mentioned the New South Wales task force, which brought together representatives from police, transport, education, housing and community services under the leadership of a police superintendent. Again, I draw the attention of the government and the opposition to the work of that task force and whether something similar can be done here.

Hon Ken Travers: That is the stuff a parliamentary inquiry can look into.

Hon GIZ WATSON: That is true. My preference is for a task force because those agencies and departments would be participants rather than just witnesses who appear before a committee. In addition, I believe that the expense would more appropriately be borne by the government rather than the Parliament. This is a matter of considerable public interest. Everyone wants to be sure that they are as safe as they can hope to be when driving in their own vehicle. We certainly want to ensure that there are no additional concerns or disincentives for people to choose to use our public transport service. We want people to consider the use of buses and trains as a safe and preferable transportation option.

More effort is needed on identifying why people are throwing rocks at vehicles. We can then deal with preventive and education programs. It is a question of taking evidence-based action rather than always resorting

to a legislative response. We need to have evidence to show that the measures we take, whether they be legislative, educative or preventive, will be effective. It costs nothing to put legislation through Parliament but whether it will be effective is another matter. The article in the *Daily Telegraph* on 22 October 2007, titled “Rock throwing reaches epidemic proportions”, states —

But it seems the threat of jail has done little to deter rock throwers.

The outcome of increasing the penalties remains to be seen but we believe that it is unlikely to achieve the desired outcome other than giving us a momentary sense of feeling good about having got tough on this issue. I again quote my colleague Ms Lee Rhiannon’s contribution to the New South Wales debate in 2008 regarding the perpetrators of these types of offences. She said —

Let us remember that in the main those who commit these stupid, thoughtless and potentially fatal acts are young teenagers—usually young men. A teenage boy’s ability to rationally ascertain possible outcomes of any act is not renowned. The bus industry has called for education of offenders who throw a missile at moving vehicles. Let us show them the horrific results of this type of stupidity. It will not solve things overnight, but existing laws can be put into place when these crimes are committed. However, the Government should work on other responses to stop this antisocial behaviour.

I concur with that approach. The Criminal Code Amendment Bill (No. 2) 2009 does not follow closely the New South Wales and Queensland approach where the main aim was to create an offence of endangering the safety of a vehicle. Clause 4 of our bill proposes to insert new section 74B into the Criminal Code that attempts to cover a wider range of criminal conduct than is represented by the actual and likely endangerment of life, health or safety of a person. Proposed section 74B, which is titled “Causing fear or alarm to people in conveyances and others”, will capture a wide range of actions relating to any vehicle, aircraft or boat. It is quite a short proposed new section and states in part —

- (1) In this section —
 - drive* a conveyance, includes to pilot an aircraft and to navigate a vessel.
- (2) A person who, without lawful excuse —
 - (a) causes an object or substance to be directed at or near, or to be placed in or near the path of, a conveyance that the person is driving; or —

Debate interrupted, pursuant to standing orders.

Sitting suspended from 1.00 to 2.00 pm

Hon GIZ WATSON: Before we broke for lunch, I was talking about the new section that is proposed to be inserted. I had just dealt with proposed new section 74B(2)(a). Proposed subsection (2)(b) states —

uses a portable device to direct a visible laser or other narrow beam of visible light at or near a conveyance that a person is driving,

in circumstances that are likely to cause fear or alarm to any person commits a crime and is liable to imprisonment for 7 years.

Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.

This proposed subsection raises a number of issues for us. First of all it applies only to actions without lawful excuse. Perhaps the parliamentary secretary could explain what “lawful excuse” the government has in mind for placing an object or pointing a laser at a vehicle. It seems strange that there could be a lawful excuse, if he knows what I mean. Perhaps when we get to the second reading response —

Hon Michael Mischin: Maybe police trying to block a vehicle. There could be a variety of lawful excuses for doing it. I cannot enumerate what they are but there is that potential. That is an actual safeguard against the otherwise strict liability that would flow from that section if it were not there.

Hon GIZ WATSON: I assume that would include road workers who might put up a roadblock and cause an accident?

Hon Michael Mischin: Or perhaps a traffic warden stepping out—that is probably a bad example. There may be a variety of reasons that an article may be projected at a vehicle.

Hon GIZ WATSON: The provision of a “lawful excuse” gives a point that can be argued in a case.

Hon Michael Mischin: That is right.

Hon GIZ WATSON: It also includes objects and substances. I will set some hypothetical examples in relation to that proposition. Could this include a hat blown off a person who happens to be walking along the side of the

road or perhaps over a pedestrian bridge, or something else in his or her possession? Does the broad definition of “object or substance” include those potential matters?

As members are no doubt aware, people have automatic sprinkler systems. They come on at different times of the night or day and sometimes they spray all over the road, but obviously not with any intention to cause an accident, or to direct this substance—that is, the water—at a particular vehicle. The bill also states that the offender needs to cause “an object or substance to be directed at or near, or to be placed in or near the path of, a conveyance”. The offence no longer focuses on the result of endangering people or creating bodily harm, but the only proof that is required is that it “causes an object or substance to be directed at or near”. For example, a failure to secure one’s hat sets a condition for the wind to be able to blow the hat off a person’s head; therefore one could argue that the person causes the hat to be directed by the wind in front of a car. Perhaps the parliamentary secretary can comment on a case such as that and whether this definition is set so broad that it would encompass that kind of circumstance.

Another example is if someone damages my sprinkler system and the water sprays out onto the road in front of somebody’s windscreen and causes fear and alarm in the driver or anybody else in the vehicle; is that similarly captured by this broad provision? It could be easily argued that that person has caused that sprinkler to project a substance into the path of a conveyance and that caused fear and alarm. It might in fact cause that person to have an accident. It is a very broad net that we are casting with these types of words.

I have another example. I am a building worker. At the end of a day’s work I have not secured an item on the back of my ute before I proceed to drive it home. Something falls off and obstructs the vehicle behind me or lands on the bonnet or windscreen of the vehicle behind me. Is that sort of incident also encompassed in this legislation? I am not suggesting that a person should do it, but it is more of a negligent act than a criminal act, in my view, because proposed subsection (2)(a) states —

causes an object or substance to be directed at or near, or to be placed in or near the path of, a conveyance that a person is driving; or

If a person causes an object or a substance to have that consequence —

Hon Michael Mischin interjected.

Hon GIZ WATSON: If a person did not tie the rope on the tarpaulin, and that tarpaulin blew off onto the windscreen of the car behind and caused fear and alarm to the people following that car —

Hon Michael Mischin: But that is not the only element of the offence—“causes an object or substance to be directed”. That is not directing it. That is it falling off because of some inadvertence, but that is not “causing it to be directed at” nor is it “placing it in the path of”. That involves some volition or some conscious action to manipulate the object in some way. I can assure the member that is not likely.

Hon GIZ WATSON: That is a very good point that the parliamentary secretary makes. I prefer to have this exchange on the record rather than by interjection because, as the Deputy President has pointed out today, the trouble with exchanges by way of interjection is that they do not necessarily get on the record. To save me having to repeat the questions to get the answers on the record, it might be an idea that I ask these questions later. I am not opposed to interjection, but if they are of some substance it is better that they are formally recorded. The whole point of one of the things we do in this chamber is to have points clarified for the record.

The offence is committed when the circumstances are likely to cause fear and alarm to any person. The bill does not relate to the action being likely to endanger the health, life or safety of a person, so the threshold of “likely to cause fear and alarm in any person” is a very low threshold. It allows the emotional response of fear and alarm in the driver—or, indeed, in a passenger—to be the test of whether one of the elements of the offence is proven.

I am curious about how the evidence of causing fear and alarm will be submitted. What if the person is a very fearful person who has just got his driver’s licence and does not have much experience in driving at all? There is a huge variation in drivers, in particular, in whether they are timid on the road, whether they feel confident, and whether things alarm them or whether they do not. I have done some research on the whole swag of bills that we are dealing with in this place that relate to perceived fears in the community of various offences, whether they be weapons attacks, rocks being thrown at vehicles or a range of other things that we are debating in the Parliament at this time. There is some very interesting information and research regarding attitudes and levels of fear. Australian criminal research indicates that the cohort that is most fearful in our community is older women in relation to all crimes, but some in particular. However, the statistics show that they are also the least likely to be victims of crime. In fact, the people who are most likely to be victims of crime are young men. That is not true of rock-throwing incidents, because they are fairly random.

However, the point I am trying to make is that if we have a test in a piece of legislation of whether the offence has been committed in circumstances that are likely to cause fear and alarm in any person, it is very hard to make

any generalisations about what circumstances cause fear and alarm. And what is the level of fear and alarm? Is it such that one fears for one's life, or is it such that one feels one's pulse rate go up and one is anxious? What level of fear and alarm are we talking about in this sort of circumstance? For example, is it that a reasonable third person might judge that there is a reason for fear and alarm, or is it purely subjective? Does the fear and alarm have to be in those who are actually in the vehicle, or might it be fear and alarm in someone who witnessed the incident? What about if the alarm was not generated in the driver but in the passenger? What about when the alarm is generated in a person who witnesses the incident on, for example, closed-circuit television, or by other means? Again, when the time comes, I would welcome the parliamentary secretary's response to these sorts of scenarios. What evidence was taken into consideration when forming the clause in the legislation that deals with this, and are there precedents of similar provisions in other legislation?

The offence also addresses the use of portable devices to direct a visible laser or a narrow beam of light. Laser pointers are visible lasers with a relatively low power output, which are frequently used in lecture halls and demonstrations to point at topics of interest on a presentation board. In a school setting, for example, laser pointers have become virtually ubiquitous, and they are very useful teaching aids. Quite a lot of laser pointers are available in the community. I understand that a drop in the price of laser pointers has also led to their increased use among the general population. More common use of laser pointers has also raised concerns about their safety, especially regarding their impact on eyesight.

Interestingly enough, many years ago in this place I raised the case of a student who had a laser pointer directed into his eye at a school in Denmark, and his vision in that eye was impaired. As a consequence of some of the issues that were raised, the regulations around the use of laser pointers were amended. My memory is that it resulted in the output of the more high-powered lasers being limited.

Hon Ken Travers interjected.

Hon GIZ WATSON: That is right. But it is going back about a decade, I think, when we first raised this issue about a particular case. Therefore, I am well aware of the potential for damage and of the distracting effects of having laser pointers used when someone is in control of a vehicle.

I wonder whether the parliamentary secretary could also inform the house about the implications of recent amendments to the Weapons Act that classify laser pointers as controlled weapons and whether that has had any impact on offences involving the use of laser pointers. Schedule 2 to the Weapons Regulations 1999 makes a laser pointer a controlled weapon under clause 10AA. Carrying or possessing such a controlled weapon is already an offence under section 7 of the Weapons Act, and carries a penalty of one year's imprisonment or \$4 000. There we have an example of a provision that already deals with laser pointers.

I will make my final points on this legislation. Along with Hon Ken Travers, I note that the bill went through seven drafts, I think, before it was introduced into Parliament. I do not have an objection to a thorough process of drafting and redrafting to try to get legislation as accurate and as comprehensive as possible before it is introduced into the chamber; however, I would be interested in the parliamentary secretary providing the evidence that supports this proposed legislative change. I would also like to be informed about what organisations or stakeholders were consulted during the drafting process. For example, I think it is fairly evident that this legislation will impact primarily on young people. Has the government consulted the Commissioner for Children and Young People, the Youth Advisory Council of WA, the Criminal Lawyers Association or the Law Society of WA? My suspicion is that the answer is no. Again, it is a worrying trend that we see legislation that is —

Hon Michael Mischin: Are we interfering with their rights or something—the rights of young people to throw rocks at cars? Is that the problem?

Hon GIZ WATSON: No, parliamentary secretary. I simply asked whether these stakeholders had been consulted. The parliamentary secretary was not in this place when Hon Barbara Scott spoke passionately for extended periods in many debates about the importance of impact statements in any legislation that had the capacity to impact on young people, for better or for worse. Even if the result of the consultation was that people said that they thoroughly support this legislation, would it not be better that the parliamentary secretary could come into the Parliament and say that the children's commissioner supports these initiatives, unlike the situation with the government's stop-and-search laws, when the children's commissioner said, "I have not been consulted. What's the point of me being the children's commissioner and" —

Hon Michael Mischin: What's she going to say?

Hon Ken Travers: If you ask her, you'll find out.

Hon GIZ WATSON: I am simply suggesting that the —

Hon Michael Mischin: What useful contribution could be made by someone asking children, as stakeholders, whether a law that says they cannot throw rocks at cars is going to affect them adversely?

Hon GIZ WATSON: The parliamentary secretary might not have listened to what I said. I did not suggest that the government was consulting with —

Hon Michael Mischin: With stakeholders.

Hon GIZ WATSON: Yes, with stakeholders. It seems to me that that is a fundamental principle of the operation of a legislative program. Since when does consultation not form a part of any legislation that the government introduces into this place?

Hon Michael Mischin: Some behaviour is so egregious that it is not the subject of debate.

Hon Ken Travers: Will Hon Giz Watson take an interjection? The point is that it is not that they necessarily oppose it; they may even suggest ways in which the objectives can be achieved, but in a better away. That's why you ask people with specific areas of expertise.

Hon GIZ WATSON: I think this government —

The DEPUTY PRESIDENT: Order, members! Once before, today, I have had to remind members about interjections. When we are in the Committee of the Whole stage, members have the opportunity to engage in this sort of dialogue; in the meantime, Hon Giz Watson has 13 minutes left, and I would like to hear what she says in that 13 minutes. Hon Giz Watson has the call.

Hon GIZ WATSON: My point is that it is western democratic tradition that consultation on legislation is an accepted part of the process. I will give the member an example of an excellent model: in New Zealand, all legislation is automatically referred to a committee, which is a subject-based committee system, and it goes through a process of asking interested parties, stakeholders, and the general public, whether they have a view on that legislation. We cannot operate in a vacuum, and there is a severe danger that this government is so self-assured that it thinks it can bring legislation into this place without consultation. This bill might get a tick from absolutely everybody who is consulted, which would actually give a lot more confidence in, and deliver kudos to the government for introducing the legislation. If it happens to be just a little bit inconvenient to include a participatory democratic process in our legislative program, quite frankly I think it is worth the wait.

The evidence in New South Wales is that bringing in stiffer penalties has not had the desired impact and the phenomenon continues to escalate. A consultation process would provide the opportunity to hear a range of views. We should go back to the basic principles: what are we trying to achieve, is this the only way we can achieve it; and, are there other measures that could achieve that goal? That is the purpose of casting one's net wider in gathering intelligent information, evidence and research, and looking at other sources of wisdom, other than the current cabinet, to formulate good legislation. We start every day in this place with, I guess, an affirmation that states that we will make laws for the good governance of the people of Western Australia. If we do not even ask them what they think about these things, we are not doing our job properly.

The Greens (WA) will not be supporting this bill. Firstly, we argue that the current law has adequate provisions to address criminal behaviour of this nature; secondly, we argue that a purely punitive approach to rock throwing is insufficient and will fail, as has been the experience in Queensland and New South Wales; thirdly, we argue that the proposed amendments have a wide reach; and, fourthly, we argue that there has been insufficient, or no, consultation with interested parties.

HON MICHAEL MISCHIN (North Metropolitan — Parliamentary Secretary) [2.23 pm] — in reply: A number of matters need to be addressed on the Criminal Code Amendment Bill (No. 2) 2009, and I thank honourable members for their contribution to the second reading debate.

Firstly, I express appreciation to Hon Ken Travers for indicating the opposition's in-principle support of the bill, although I take issue with some of his comments about the government's actions in initiating this legislation. I fasten particularly on the criticism that somehow the government has been "lazy and incompetent" because it had not introduced this legislation earlier and dealt with it. He also stated that he thought we had been ignorant of the dreadful history of these offences, and, in support of that comment, he gave us a history lesson dating back to, I think, October last year, which was very useful. But the history of these types of offences goes back a little bit earlier than that. I recall it being a problem under the regime of the former government.

Hon Ken Travers: There has been a spike during the period of this government's watch!

Hon MICHAEL MISCHIN: I thank Hon Ken Travers very much!

I will quote from an article in *The West Australian*, the subheading of which is "Surge in bus attacks, vandalism". The article states —

An incident log obtained by *The West Australian* shows there were 261 reported instances of violence, including 163 rock-throwing attacks on PATH Transit buses, between the start of the year and the end of last month. In one incident last week a youth was caught by police after allegedly throwing half a house brick through a bus window.

The problems are so severe the Transport Workers Union has called for drivers to be put in isolated security booths and for special reinforced glass to protect drivers and passengers.

TWU State secretary Jim McGiveron said it was only a matter of time before a driver or a passenger was seriously hurt or killed.

Mr McGiveron called for tighter security to protect buses. He said the Government had poured millions of dollars into improving rail security but done little for buses — which carried many more passengers each day. “Our drivers are taking their lives in their hands every day they get behind the wheel of a bus and go out on their shift,” Mr McGiveron said.

He had heard anecdotal evidence from drivers on Perth’s three other major bus networks that they faced similar levels of violence.

“The level of violence is unbelievable and we are only looking at one of the four bus companies here but it looks like violence in the northern suburbs is out of control ...

Our suburbs, Hon Ken Travers.

Hon Simon O’Brien: When was this published?

Hon MICHAEL MISCHIN: I will get to that in a moment. The article continues —

PATH Transit operations manager Graeme Brice said the company feared someone could be hurt or killed if action was not taken. “You can replace a window but you can’t replace a life,” Mr Brice said. “There are 235 people assigned to train security but there is little or no security for buses.”

Mr Brice said the worst incidents most frequently occurred in the Clarkson, Girrawheen, Merriwa and Mariginiup areas on Wednesday to Saturday nights.

Transperth acting director Mark Burgess said the problems were widespread across the network. But there were nearly 900 buses on 400 routes around the metropolitan area and it would be impossible to put security guards on all of them.

That article is dated 24 November 2001!

That was some nine months after the former government took office in 2001. The member said today that we have been lazy and incompetent in trying to deal with this in our first term of government in the year —

Hon Ken Travers: You had a spike; the government said it was going to introduce legislation after the winter break, but it didn’t do it until we made it!

Hon MICHAEL MISCHIN: We will get to that. The very idea that somehow we have been neglectful of the problem is just simply grotesque.

Hon Ken Travers: No, it’s not.

Hon MICHAEL MISCHIN: To say that is simply grotesque, given that nine months after the former government first took office that article was written, and after being in office for seven and a half years, only now, in opposition, does it gets around to putting through a bill to try to make this sort of conduct an offence—and the opposition says that we have been lazy and incompetent!

The honourable member told us today that he only recently found out that there were no duress alarms in privatised network buses. Where was he for seven and a half years? He was not listening to the bus drivers!

Hon Simon O’Brien: He was asleep at the wheel, obviously!

Hon MICHAEL MISCHIN: As for the initiative adopted by the opposition in putting forward the Criminal Code (Rock Throwing and Laser Pointing) Amendment Bill 2009 in the other place, all it did was, effectively, replicate the current law; it was not a great advance at all. That is something that I understand that the proponent of that bill—the member for Mindarie—acknowledged during the course of debate in the other place.

It certainly seems that the opposition is far better at playing the role of government when it is in opposition; it seeks to put forward more of the initiatives that it never quite got around to when it had the power to do so.

This legislation creates an offence for directing, or placing in the path of a vehicle or other conveyance, some object that may cause alarm or fear. This is an objective test. It is not correct, as Hon Giz Watson tried to suggest, that somehow the current criminal law is adequate. If that were the case, we would not be dealing with the difficulty that has been faced over the past several months whereby the police have said that they have doubts as to whether they could establish beyond a reasonable doubt that there was a likelihood of endangerment of life or health or safety.

If members look at the existing law, they will see the inadequacies. Assault is the application or threatened application of force to another without that other person's consent. Whether throwing something in the path of a vehicle is an assault against the driver is certainly arguable. I would have thought that in most circumstances it is not assault. If it is aimed at the driver of a vehicle, then, yes, throwing a rock at that driver or at that vehicle may very well amount to an assault, but not necessarily. Section 304 of the Criminal Code goes further and provides for, effectively, a reckless endangerment-type offence, but that also falls short of the mischief that this legislation attempts to address. Section 304(1), which provides the lower level offence in that provision, states —

If a person omits to do any act that it is the person's duty to do, or unlawfully does any act, as a result of which —

(a) bodily harm is caused to any person; or

That can be the throwing of a rock or some other solid article at a vehicle —

(b) the life, health or safety of any person is or is likely to be endangered, the person is guilty of a crime ...

That is where the rub is, because in many of these cases it may not be possible to establish beyond reasonable doubt that the throwing of an article at a vehicle, at a conveyance, is likely to endanger the life, health or safety of any person. What this legislation addresses is not the risk of endangerment, but the alarm or apprehension that drivers and others may encounter when objects are cast into their path or directed at them. That is the real mischief. Why is rock throwing at buses a bad thing if it does not in fact hurt anyone—if the rock bounces off the window? Because it has the potential to hurt someone. Can we establish beyond reasonable doubt that it was likely—that is, more likely than not—that a person would be endangered or that a person's health or safety would be affected? That may not be able to be established beyond reasonable doubt. This legislation focuses on the feelings of fear that drivers and passengers in conveyances may experience that may cause them to react in a way in which they might not ordinarily react. That is why that particular focus has been taken. It has been extended also to the use of narrow beams of light, most commonly lasers, but there may be other forms of narrow beams of light. We have heard about incidents of laser pointers and the like being directed at aircraft and how that may temporarily blind a pilot, but whether it is more likely than not that it will endanger the life, health or safety of the pilot or any of the people in the plane is arguable. It may not; there may be safety systems in the aircraft that prevent that from happening. But it is an undesirable practice, and there is nothing in the law that currently covers that. That is what this legislation focuses on. It is all very well to argue, "Well, we don't know if it is going to be effective; maybe there are other ways of dealing with it." Certainly, social programs, education and the like are all very well, but if it is not an offence, and if it is not said by Parliament to be wrong conduct that is punishable, there is a licence to do it. There is nothing to stop people from doing it and that is what the legislation intends to cure.

A question was asked about why the penalty is seven years. It was also considered that section 304(1) of the Criminal Code—that is, the provision I read out a moment ago—had an inadequate penalty. Section 304(3) involves actual harm and the like and carries a penalty of 20 years; that is akin to doing grievous bodily harm to someone. Section 304(1) carries a penalty of five years. It was considered by the government that that penalty was too low and that it should be increased to seven years and that the new offence would carry a comparable penalty, which is why it has been set at seven years. A summary conviction penalty has also been prescribed.

Hon Ken Travers: Do you have any history of whether people have been charged under section 304(1) and what penalties they have received?

Hon MICHAEL MISCHIN: I do not, but I can recall that during the course of my time as a prosecutor there were very few indictments laid under section 304(1) or section 304(3). Generally, the trend was towards charging offences in which some substantial harm had been done—for example, causing grievous bodily harm. There were circumstances in which it was preferable to charge under section 304(1) or section 304(3) because direct intention or volition could not be established. I can get some examples of that, but it is probably not material. For example, the firing of a firearm at someone from a distance whereby the person firing the firearm does not much care whether he hits the victim and, in fact, it is a narrow miss would fall squarely under section 304(1) or section 304(3). It may not amount to an assault because the recipient does not even know the force is being directed at him and it has not been directed at him. It may not amount to attempted murder because there is no intent to kill. Therefore, although section 304 of the Criminal Code is a very good provision, it is also

limited; it does not extend to the sort of mischief that we are trying to address, which is the indiscriminate throwing of things at or near vehicles with a view to scaring or alarming the driver.

It has been suggested that somehow this is a very subjective test. It is not. It has been deliberately framed to be an objective test in circumstances in which the action of rock throwing is likely to cause fear or alarm to any person. It has been deliberately chosen because, for example, a person may be driving along the freeway and witness someone drop a rock from an overpass in front of the vehicle in front. That vehicle swerves and then moves on. That circumstance would be caught by this new provision. We may never know who the driver of that other vehicle was and we cannot ask whether he was frightened or what caused his alarm. However, it is pretty obvious to us when we are following—we were worried! Therefore, the objective test is that someone threw something down in front of a vehicle in circumstances in which it was likely that a person would be alarmed or fearful.

Hon Ken Travers: I take the legal point of that objectivity, but when it gets to the practical application in a court of law before a jury, people will use the subjective view about whether they would be alarmed or fearful in that circumstance.

Hon MICHAEL MISCHIN: That is exactly the point: that is an objective test. The subjective test is what the victim thinks, feels and the like.

Hon Ken Travers: But in a practical sense that is how most members of a jury would apply that objective test. They would place the subjective test of: if I were in that situation, would I be alarmed or fearful? I accept the legal argument —

Hon MICHAEL MISCHIN: I am sorry; the honourable member misunderstands me. It may be the way that I am expressing it. I will give an example. If I were to pick up my pen and throw it over the member's head, most people may not think that there is anything in that. The member, on the other hand, may say that he was scared witless by that action because he is a timid man. The objective test is whether that throwing of the pen over the member's head was likely in all the circumstances to cause fear or alarm. If a straw poll were taken of people in this chamber, they would probably say no. That is the objective test. The subjective test is what the member thought about it at the time. Of course, subjective tests may or may not be reliable. However, there are many tests in criminal law that involve the same objective test of circumstances that are likely to do things.

I direct the house's attention to section 68, "Being armed in a way that may cause fear", of the Criminal Code.

Hon Ken Travers: I accept that fear is already covered in the Criminal Code, but I am not sure whether there is another provision for alarm.

Hon MICHAEL MISCHIN: No, maybe not.

Hon Ken Travers: I suspect that the first thing that a defence counsel will ask the victim is whether he felt alarm or fear. An experienced driver would probably say, "It was stupid, but I wasn't fearful of it."

Hon MICHAEL MISCHIN: That is so, and that is one of the other reasons for having an objective test. It does not go to the particular weaknesses or strengths of people, but to how, in the circumstances, a reasonable person would have felt and would have reacted. Hon Ken Travers mentioned jurors getting together and putting themselves in the place of the victim. That is entirely right. That is the reasonable person test. By a jury pooling that collective wisdom, we get that reasonable person. What would a reasonable person in that circumstance be likely to feel? That is not uncommon; that is one of the foundations of many offences in criminal law. It is not unusual or unique. That is also the test in breaches of duty such as in section 266 of the code—reasonable precautions, acting in a reasonable way. That is one of the safeguards incorporated in the proposed provision.

Another one was identified by Hon Giz Watson, but in a way that suggested a flaw in the legislation rather than a benefit. However, the issue is the use of the term "unlawful", where one unlawfully does an action. We may not be able to think of a lawful reason for throwing a rock, but rocks are not the only instrument governed by this legislation. A variety of things could happen, and there may be lawful reasons for them. That is simply a safeguard.

Hon Ken Travers: From the way the legislation is written, it applies if you look like you are throwing something, although you might be trying to stop a vehicle as a police officer. It would be lawful to do that.

Hon MICHAEL MISCHIN: That would be lawful. Putting out an obstruction to blow out the tyres of a vehicle would be a lawful activity if it is done under regulations that provide for that, as would putting up a roadblock in front of a vehicle.

Hon Ken Travers: The term "substance" becomes interesting.

Hon MICHAEL MISCHIN: I am taking the objections. I do not have a problem with that, Mr Deputy President, if that assists the debate.

Hon Ken Travers: I am trying to see if we can debate the clauses by interjection and not in committee.

Hon MICHAEL MISCHIN: I am content with that too, if Hansard can follow it and if the Chair does not object to that process.

The DEPUTY PRESIDENT (Hon Jon Ford): Order! If we are going into committee, perhaps that would be the place to have this discussion in detail, because it allows other members to ask follow-up questions that arise from matters raised.

Hon MICHAEL MISCHIN: I have been tempted, perchance seduced, by the idea of not going into committee.

The DEPUTY PRESIDENT: Order! We have all been tempted and seduced at some time in our lives.

Hon MICHAEL MISCHIN: Questions have been raised about what is an object or a substance. It takes its ordinary meaning. Water would be a substance. The member for Mindarie raised the possibility of paint being thrown at a bus. Paint might be a substance or it might be an object. He could not make up his mind in the end. I would have thought it was a substance. It does not much matter; it falls within the scope of the legislation.

Hon Giz Watson referred to things dropping off a vehicle. Again, the legislation refers to a person who causes an object or substance to be directed at or near, or places it, in the path of a vehicle. Those are acts of volition—someone directs something at a person or at a vehicle, or places it in the path of the vehicle. In terms of the legislation, they cause something to be directed or cause something to be placed. It may mean, for example, setting up a blinding light in a way that will distract drivers when they come around a bend. That, again, may cause fear and alarm to drivers, and that will be captured by the legislation if it is a sufficiently narrow beam of light. I think I have dealt with the potential for old people and young people having different levels of fear and alarm. A question was raised about laser pointers. They are not illegal. Certain types of them may be controlled. We are not concerned with that. I cannot provide any figures on how many people have been prosecuted for carrying controlled weapons of that character. It is irrelevant to us; the issue is about how these things are used in the context of alarming and distracting drivers going about their business.

Is there evidence to support the legislative change? We have heard from Hon Ken Travers, and I have already read out something from 2001, that suggests that it was a problem that was increasing in frequency back then, and it has not diminished.

Hon Ken Travers: To the same degree that it spiked during your watch.

Hon MICHAEL MISCHIN: I will have to stay in more on Saturday nights rather than going out and throwing rocks at cars and perhaps that will reduce the figure!

With regard to the effect on young people, I do not know whether it will affect young people more than old people, but that is by the by. It is an area of antisocial conduct that we feel ought not to be legal if it is legal and that there is a public benefit from saying that this conduct is not sanctioned by the community and is considered by Parliament to be offensive. That is the reason for introducing this legislation.

I think I have dealt with the salient issues that have been raised. A question was asked that I suppose I should address about the number of drafts that this legislation has gone through. It is not a simple piece of legislation. It has been addressed in a variety of ways in other jurisdictions and to differing levels of effect as far as we are concerned. The legislation in some of the other jurisdictions effectively mirrors section 304 of the Criminal Code, which we do not think covers the field. The instructions were issued, I understand, from cabinet on 16 February this year. The first draft was received from Parliamentary Counsel on 17 June, and subsequent drafts on 23 June, 12 August, 17 August, 2 September, 26 October and 10 November. At various times throughout that, the State Solicitor's Office advice was sought on a variety of issues as to the adequacy of the legislation. There was a considerable amount of debate about whether what was being suggested by Parliamentary Counsel was actually achieving the ends that were being hoped for. At one stage—I think it was early October—I was directly involved in giving my views on a draft for this particular provision, in trying to focus the attention on, hopefully, solving the inadequacies of earlier drafts. There has been delay because it is not a simple provision. It needs to be sufficiently broad to cover the field and all the potential eventualities, and at the same time not be so broad as to capture otherwise innocuous behaviour.

Hon Ken Travers: Did all the drafts deal with the legislation as it is currently formed, or was there a point when you changed the nature of the drafts you were dealing with?

Hon MICHAEL MISCHIN: I cannot speak categorically about what happened earlier than that, but I know that the last draft directed attention more towards the current provision than had been previously the case. Earlier drafts looked at things like reducing the standard of risk to drivers.

Hon Ken Travers: Like the Queensland-New South Wales model?

Hon MICHAEL MISCHIN: Yes. The current one follows some discussion I had with the Attorney General and others where focus was redirected to the current focus on the effects on drivers and others. That concludes my remarks. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee and Report

Bill passed through committee without debate, reported without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Michael Mischin (Parliamentary Secretary)** and passed.