

ROAD TRAFFIC AMENDMENT BILL 2010

Council's Amendments

Amendments made by the Council now considered.

Consideration in Detail

The amendments made by the Council were as follows —

No 1

Page 2, line 14 — To delete the line and insert —
section 79BB(2), 79BCB(2) or 79BCE(2).

No 2

Page 2, lines 16 to 18 — To delete the lines and insert —
(2) In section 78C(2) delete “section 79BB(2)” and insert:
section 79BB(2), 79BCB(2) or 79BCE(2)

No 3

Page 2, line 22 — To delete the line and insert —
section 79BB(2), 79BCB(2) or 79BCE(2); or

No 4

Page 3, line 4 — To delete the line and insert —
79A(1), 79BB, 79BCB or 79BCE

No 5

Page 6, after line 29 — To insert —

79BCC. Cancelling notices to surrender

(1) In this section —

notice to surrender means —

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

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

- (a) a notice to surrender has been given to a person in respect of a vehicle; and
- (b) the vehicle has not been impounded under section 79BB, 79BCB or 79BCE, as the case may be; and
- (c) either —
 - (i) if the vehicle were so impounded, the vehicle would be a vehicle that could, under section 79D, be released before the impounding period ends; or
 - (ii) the vehicle's condition is such that it no longer functions as a vehicle and a licence could not be issued for it under Part III,

the officer may cancel the notice to surrender.

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

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

(1) This section applies if —

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

- (7) If the alleged offender is a responsible person for 2 or more other vehicles, the surrender alternative vehicle notice must specify only one of them as the alternative vehicle, being the one decided by the member of the Police Force issuing the notice.

79BCE. Consequences of surrender of alternative vehicle notice

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

No 6

Page 7, line 13 — To delete the line and insert —
notice; or

- (c) a responsible person for a vehicle who is given a surrender alternative vehicle notice under section 79BCD fails to surrender the alternative vehicle specified in the notice according to the notice,

No 7

Page 9, after line 9 — To insert —

- (3C) The Commissioner is to ensure that, as soon as practicable after a vehicle (the ***alternative vehicle***) is impounded under section 79BCE following the issue of a surrender alternative vehicle notice to a responsible person for the vehicle under section 79BCD, notice of the impounding is given to —
- (a) each responsible person for the vehicle; and
- (b) if the licence in respect of the vehicle is for the time being suspended under section 79BD, the Director General.
- (3D) The notice of the impounding given under subsection (3C) is to be in an approved form and contain details of —
- (a) the offence referred to in section 79BCD(1)(a) including the time and place at which it is suspected to have been committed; and
- (b) the alternative vehicle sufficient to identify it; and
- (c) the time when the alternative vehicle was impounded; and
- (d) the address of the place where the alternative vehicle is stored; and

- (e) the length of the impounding period for the alternative vehicle which is to be the period specified in the surrender alternative vehicle notice under section 79BCD(5)(g); and
- (f) the grounds on which the alternative vehicle may be released under section 79D; and
- (g) how, when and to whom the alternative vehicle can be released; and
- (h) the powers of a court under sections 80A, 80B, 80C and 80FA in relation to the impounding and confiscation of vehicles.

No 8

Page 9, line 16 — After “section 79BCA” to insert —

or a surrender alternative vehicle notice under section 79BCD

No 9

Page 10, line 12 — After “section 79BCB,” to insert —

or an alternative vehicle has been impounded under section 79BCE,

No 10

Page 10, line 18 — To delete “given” and insert —

given, or under section 79BCD a surrender alternative vehicle notice has been given,

No 11

Page 10, line 26 — To delete “notice,” and insert —

notice or surrender alternative vehicle notice,

No 12

Page 10, after line 33 — To insert —

taxi means a vehicle —

- (a) on which taxi plates issued under the *Taxi Act 1994* are being used; or
- (b) in respect of which a taxi-car licence has been issued under the *Transport Co-ordination Act 1966* Part IIIB,

and it does not matter whether or not, at the relevant time, it is standing or plying for hire or carrying passengers for reward;

taxi operator, of a taxi, means a person who —

- (a) under the *Taxi Act 1994*, owns or leases the taxi plates, issued under that Act, that are being used on the taxi; or
- (b) holds the taxi-car licence issued under the *Transport Co-ordination Act 1966* in respect of the taxi;

No 13

Page 11, line 7 — To delete the line and insert —

79A(1), 79BB, 79BCB or 79BCE;

No 14

Page 11, line 20 — To delete “responsible person for it,” and insert —

person lawfully in possession of it,

No 15

Page 12, after line 30 — To insert —

- (ga) a senior police officer is satisfied that, at the time the offence in respect of which the vehicle was impounded was committed —
- (i) the vehicle was used primarily in the course of a business conducted by a person (the **business owner**); and

- (ii) the person who allegedly committed the offence (the *alleged offender*) was an employee or contractor of the business owner; and
- (iii) the alleged offender was driving the vehicle with the consent of the business owner or an agent of the business owner; and
- (iv) the person who consented to the alleged offender driving the vehicle had complied with subsection (4A); and
- (v) the alleged offender was not a responsible person for the vehicle;
- or
- (gb) a senior police officer is satisfied that, at the time the offence in respect of which the vehicle was impounded was committed —
 - (i) the vehicle was a taxi; and
 - (ii) the person who allegedly committed the offence (the *alleged offender*) was driving the taxi under an agreement between him or her and the taxi operator of the taxi, or an agent of the taxi operator, under which the alleged offender pays the operator or agent in order to be allowed to drive the taxi for reward; and
 - (iii) the taxi operator or agent who entered into the agreement with the alleged offender had complied with subsection (4B); and
 - (iv) the alleged offender was not a responsible person for the vehicle;
- or
- (gc) a senior police officer is satisfied that, at the time the offence in respect of which the vehicle was impounded was committed —
 - (i) the vehicle was licensed under the *Transport Co-ordination Act 1966* to be operated as an omnibus; and
 - (ii) the person who allegedly committed the offence (the *alleged offender*) was an employee or contractor of the holder of that licence; and
 - (iii) the alleged offender was driving the vehicle with the consent of the holder of that licence; and
 - (iv) the person who consented to the alleged offender driving the vehicle had complied with subsection (4A); and
 - (v) the alleged offender was not a responsible person for the vehicle;
- or
- (gd) a senior police officer is satisfied that —
 - (i) the vehicle cannot be released under any of paragraphs (a) to (gc) or under circumstances prescribed under paragraph (g); and
 - (ii) unless the vehicle is released, manifest injustice or manifest unfairness will be suffered by a person other than the alleged offender;
- or

No 16

Page 13, after line 12 — To insert —

- (4A) For the purposes of subsection (2)(ga)(iv) and (gc)(iv), a person who consents to an employee or contractor driving a vehicle must —
 - (a) ensure the driver has a driver's licence that authorises him or her to drive the vehicle; and
 - (b) ensure the driver has been instructed to obey the law when driving the vehicle.
- (4B) For the purposes of subsection (2)(gb)(iii), a taxi operator or agent who enters into an agreement with a driver must —

Mr Ben Wyatt; Mr Bill Johnston; Mr Rob Johnson; Deputy Speaker; Mr Mark McGowan

- (a) ensure the driver has a driver's licence that authorises him or her to drive the vehicle; and
 - (b) ensure the driver has been instructed to obey the law when driving the vehicle.
- (4C) For the purposes of subsection (2)(gd) none of these factors by itself means manifest injustice or manifest unfairness will be suffered by a person —
- (a) if the offence in respect of which the vehicle was impounded was an impounding offence (driver's licence), the fact that a person responsible for the vehicle concerned had no grounds to suspect the alleged offender was not authorised to drive the vehicle at the time of the offence;
 - (b) the fact that, although a responsible person for the vehicle expressly or impliedly authorised the person who allegedly committed the offence in respect of which the vehicle was impounded (the *alleged offender*) to drive the vehicle, the responsible person had no grounds to suspect the alleged offender would drive in a manner that contravened this Act.

No 17

Page 13, lines 27 and 28 — To delete the lines and insert —

and any substitute vehicle impounded under section 79BCB and any alternative vehicle impounded under section 79BCE

The SPEAKER: While the advisers are coming to the floor of the house, I ask the Minister for Police to give me an indication of whether he intends to seek leave to deal with these amendments en bloc, or whether he intends to deal with them separately.

Mr R.F. JOHNSON: Mr Speaker, I have had an indication from the member for Girrawheen and the manager of opposition business that they want me to deal with these amendments separately.

I move —

That amendment 1 made by the Council be agreed to.

I will begin by speaking briefly to the amendments that have been made to this bill in the other place and form the subject matter of this message. Before I do that, I reiterate my thanks to members for their interest in the bill and their cooperation during the passage of the bill through this house.

Members know the history of this bill. It was prepared as a high priority to provide a prompt response to recent circumstances with which we are all familiar; namely, that certain vehicles were impounded, and in the circumstances it was considered that it would be appropriate to release those vehicles prior to the end of the impounding period. However, as members all know, the legislation as it stands did not permit the early release of those vehicles to occur.

When the bill was being drafted, it was acknowledged by government that there would be a need to provide —

Ms M.M. Quirk: Could you speak slower and louder, minister, because I cannot hear.

Mr R.F. JOHNSON: I was going to pay the member a compliment in a minute. I will say it louder.

Mr M.P. Murray: Can we have it louder and shorter!

The SPEAKER: Thank you, members!

Mr B.S. Wyatt interjected.

The SPEAKER: Member for Victoria Park! This is not helping the process at all. I formally call you for the first time.

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

When the bill was being drafted, it was acknowledged by government that there would be a need to provide for the early release of impounded vehicles in some other circumstances. In order to introduce the amendments contained in this bill as a matter of priority, while retaining an ability to cater for these other circumstances, the bill includes the power to make regulations prescribing further circumstances in which the Commissioner of Police will be able to release an impounded vehicle prior to the end of the applicable impounding period. It was

always intended that this regulation-making power would be used soon after the bill's provisions commenced operation, once a proper assessment of potential circumstances could be completed.

During the bill's passage, the member for Girrawheen moved amendments aimed at dealing with some other early release circumstances that she had identified. I thank the member for her efforts. These amendments were not acceptable as drafted. However, this government saw merit in what those amendments were trying to achieve. In the spirit of cooperation, rather than await the bill's passage and make use of the regulation-making power I have referred to, I committed to arrange for the drafting of some of the amendments that we are about to consider. Other amendments flow naturally from those and are necessary to ensure the consistency of the legislation.

I will now summarise the three key matters contained in the amendments. Firstly, the amendments will add some further circumstances in which the Commissioner of Police will be able to release an impounded vehicle before the end of the impounding period. Secondly, the amendments will enable the cancellation of a notice that has been given requiring the surrender of a vehicle for impounding. There will be only two instances in which such a notice may be cancelled. The first instance is when, if the vehicle were to be impounded, it would be eligible for early release. It is obvious that no purpose would be served in proceeding to require the impounding of a vehicle in these circumstances. The second instance is where the condition of the vehicle has been so significantly altered—for example because it has been involved in a serious motor vehicle accident—that it no longer functions as a vehicle. Once again, it is obvious that no purpose would be served in impounding such a vehicle, as no-one would suffer any ill consequence in relation to its impounding.

Thirdly, and finally, the amendments will empower a member of the police force to give an alleged offender a surrender alternative vehicle notice if, one, a notice requiring the surrender of the vehicle for impounding has been cancelled in the manner I have just described; and, two, the alleged offender is the responsible person for one or more other vehicles. The power, in keeping with the proposed power already contained in the bill, will give an alleged offender a surrender substitute vehicle notice if, one, the Commissioner of Police has released early a vehicle impounded in connection with an impounding offence; and, two, the alleged offender is the responsible person for one or more other vehicles. I will conclude my comments at this point so that we can deal with the message before the house.

Ms M.M. QUIRK: I thank the minister for his gracious comments. I need to be a little ungracious, I am afraid, at the start of the debate on these amendments. I want to say, first, that when the anomalies in the existing act were discovered, the minister offered to expedite through Parliament the necessary amendments to close the loopholes. Well, we are now in the middle of June. That undertaking was made, from my recollection, in, if not late, December, early January. So I do not think all due expedition has been taken. But as we have heard the minister say, that is partly because of his need to consider the amendments that the opposition proposed.

I need to say also that with regard to the so-called deficiencies that the minister identified in our drafting, the minister can expect more deficiencies in the future. I say that because the opposition's ability to get comprehensive drafting done in a speedy manner has now been very much curtailed by a recent change to the regime by which private members' bills are drafted. If the minister is concerned that these amendments were deficient, just watch this space. The opposition is now in a position in which we will have to wait in line. Parliamentary Counsel will now draft our amendments, and we will have to wait until after government business has been finalised. In my view, that will make a real inroad into the democratic processes of this place and the capacity to get good, decent public policy and legislation through the Parliament. I make the comment that the Leader of the House should brace himself, because if we do not have the capacity to get comprehensive and thorough legal drafting undertaken in a timely fashion, what will be put up to the government in terms of amendments is likely to be worse than what we have at the moment.

In terms of the clause, I ask the minister to explain the need for amendment 1. I gather it is consequential upon the insertion of additional provisions, but perhaps the minister could clarify that.

Mr R.F. JOHNSON: Yes. I am very happy to clarify that. Amendment 1 is a consequential amendment, as the member has said. It is necessary because of the amendment that has been made to clause 6 of the bill, which will follow amendment 5 in the message. The amendment provides for the insertion of proposed new sections 79BCC, 79BCD and 79BCE. By way of summary, those sections will provide for the cancellation in particular limited circumstances where a notice requiring the surrender of a vehicle for impounding has been issued, and the alleged offender is the responsible person for one or more other vehicles. It will empower a member of the police force to give the alleged offender a surrender alternative vehicle notice requiring the surrender of one of those other vehicles.

This amendment will insert the necessary reference in clause 4(1) to proposed new section 70BCE, which relates to surrender alternative vehicle notices. Clause 4 will amend section 78C, which deals with police powers to impound vehicles the subject of surrender notices, to ensure that those powers extend to the impounding of

Mr Ben Wyatt; Mr Bill Johnston; Mr Rob Johnson; Deputy Speaker; Mr Mark McGowan

vehicles the subject of surrender substitute vehicle notices and, pursuant to this amendment, also to vehicles the subject of surrender alternative vehicle notices.

First of all, I accept that these amendments are very lengthy and when I saw them I thought, “Jeepers; we’re trying to solve a problem.” My expert advice, as the member would know, is that to deal with these problems, we must clarify it completely so that there is no ambiguity about it in the future. We have seen it in the past and we do not want to see it in the future. We are trying to tidy up things. As I said earlier, I accept the principle of the amendments that the member moved. As I told her at the time, there was some merit in what she was trying to do. However, I was advised that the amendments needed more expert drafting and consideration, and that is what happened. That is no reflection on the member. The merit of the amendments was good; I accept that. I gave the member a commitment that I would do it in the upper house, because that was the quickest way to do it, rather than use the benefits of regulation. Can I ask the member a question? Does she already have a press release for this?

Ms M.M. Quirk: It’s being drafted, minister!

Mr R.F. JOHNSON: I thought it might be! I just wanted to know what to expect tomorrow morning or the day after.

Ms M.M. Quirk: I’m doing the job, minister.

Mr R.F. JOHNSON: That is fine. I hope that clarifies the member’s question about amendment 1.

Ms M.M. QUIRK: Can I clarify that that provision has not just been inserted there because of the added amendments, but that it also deals with the substitution of an alternative vehicle? Is that correct?

Mr R.F. Johnson: I am advised it is entirely to do with the amendments.

Mr B.S. WYATT: The member for Girrawheen has sold herself short on the amendments that she moved last year. This has nothing to do with deficiencies in drafting, minister; this is to do with a deficiency in the minister. I have looked at the size of the amendments; the minister expects them to be dealt with in a few short minutes of debate. The amendments are longer than the legislation itself! With the greatest respect, the minister needs to bring in a new bill and make a new second reading speech. What was his quote? He said that it was to tidy up things or because of deficiencies in drafting. This is to deal with the embarrassment of the minister’s performance after the legislation was passed. This is what happens when the government brings in legislation after the election in an attempt to score political points. The amendments moved by the member for Girrawheen when the bill first came before this house were good amendments, and the minister mocked and ridiculed the opposition for daring to move those amendments. This is an extraordinary range of detailed amendments. These are not simply to deal with deficiencies in drafting. These amendments change the nature of the bill itself, and the minister should introduce a new piece of legislation. No wonder he stood at the beginning and had his great mea culpa and tried to rope the member for Girrawheen in on his performance. This is a simple result. This has happened before. This happened yesterday with the debit and credit card amendments to the State Trading Concerns Act. These amendments were suggested by the opposition in this place, but were ignored and ridiculed by the government, and when the bill got to the upper house, the government realised that its legislation did not cut the mustard. That is what is going on here. We have seven and a half pages of detailed amendments to a bill that is barely 14 pages long. This is simply a deficiency in the minister, not a deficiency in drafting. The minister needs to go away and come back with a new second reading speech because these amendments fundamentally change the tenet of the legislation.

Mr R.F. JOHNSON: The member for Victoria Park is a cherub.

Mr B.S. Wyatt: Just answer the question; you don’t need to be patronising about it.

Mr R.F. JOHNSON: The member does not need to be rude either.

Mr B.S. Wyatt: Don’t call me a cherub; I’m the member for Victoria Park.

Mr R.F. JOHNSON: The member for Victoria Park may want to be the next leader, but he is going to have to fight with that fellow over there. I suggest that the member try to be a bit more statesmanlike.

Mr B.S. Wyatt: Just answer it; you’ve got seven and a half pages of amendments.

Mrs C.A. Martin: You’re being obnoxious!

The DEPUTY SPEAKER: Members!

Mr R.F. JOHNSON: These amendments do not correct my legislation; they correct the opposition’s legislation. They correct the legislation that the opposition brought in six years ago. I think the comments from the member

for Victoria Park were disgraceful. I acknowledged the amendments that the member for Girrawheen put forward.

Mr B.S. Wyatt: No, you didn't; you ridiculed her when she brought them in last year.

The DEPUTY SPEAKER: Members! We have had some banter on this. I cannot hear the minister.

Ms M.M. Quirk interjected.

The DEPUTY SPEAKER: Thank you, member for Girrawheen.

Mr R.F. JOHNSON: Let me just go back a while.

Mrs C.A. Martin: Stop being paternalistic.

The DEPUTY SPEAKER: Member for Kimberley!

Mr R.F. JOHNSON: I did not berate the member for Girrawheen when she moved her amendments. She knows that and I know that.

Ms M.M. Quirk: You just rejected them.

Mr R.F. JOHNSON: Other members might have a different interpretation of that. I rejected them because there were some flaws in them. That was the advice that I was given. I gave the member a commitment to look at the amendments, consider them carefully and have them introduced in the upper house.

Mrs C.A. Martin: You did say that.

Mr R.F. JOHNSON: I thank the member; I know I did. I do not tell porkies in this place, I assure members.

What I am saying is that I did pay credit. I said that I thought the principle of the amendments was worthy, but that I would need to consider them in more detail. I did not want to do it on the run. I said that I would look at them and then have them introduced in the other house, possibly with some tinkering around the edges to make them right according to Parliamentary Counsel.

Mr B.S. Wyatt: Tinkering around the edges! There are seven and a half pages of amendments.

Mr R.F. JOHNSON: They were the amendments that the member for Girrawheen put forward to me. I gave her a commitment to do that.

Ms M.M. Quirk: But it's more than that in this bill, isn't it, minister? There are additional amendments.

Mr R.F. JOHNSON: The member for Girrawheen is quite right; there are additional amendments. I will explain it to her because she understands this bill perfectly. The reason there are additional amendments is that when we were considering her amendments, I asked my advisers to come up with any other circumstances not covered by the member's amendments that could possibly be foreseen that we had had some experience with, and there were two or three examples. I took those examples into account and I tried to cover them in the bill, because I did not want to have to make changes again in six months because a member of the public had been unfairly treated. We are after the offender, not an innocent vehicle owner. That is what I did. That is why there are additional amendments to the ones that the member moved. There are the member's amendments and there are the government's amendments.

Ms M.M. Quirk: Minister, that's why I'm trying to listen. Can you explain a bit more about what had to be done in addition to the amendments that we moved?

Mr R.F. JOHNSON: I cannot tell the member exactly —

Mr B.S. Wyatt: He's got no idea; that's why, member for Girrawheen. He just needs to go back and do a whole new bill and make a new second reading speech.

Ms M.M. Quirk: If this was a panelbeating job, it'd be a write-off, minister!

Mr R.F. JOHNSON: The first bit that we had to add to that amendment was to enable the cancellation of a notice that had been given requiring the surrender of a vehicle for impounding. There would be only two instances in which such a notice would be cancelled. We encompassed that in the member's amendment, because it was very important to do that. We need the legislative authority to be able to cancel notices.

Ms M.M. Quirk: I will just help you along here, minister. What you are saying is that when you have identified that for some reason the owner of the vehicle should not be deprived of his vehicle, it is necessary to cancel the impoundment notice and maybe issue an alternative impoundment notice for the vehicle of the person who was actually driving. Is that what you're telling us, minister?

Mr R.F. JOHNSON: That is absolutely correct.

Mr Ben Wyatt; Mr Bill Johnston; Mr Rob Johnson; Deputy Speaker; Mr Mark McGowan

Several members interjected.

The DEPUTY SPEAKER: Members!

Mr R.F. JOHNSON: The trouble is that that was not covered in the member's amendment. Her amendment went only so far, so I added that.

Several members interjected.

The DEPUTY SPEAKER: Members!

Mr R.F. JOHNSON: The member for Girrawheen is quite right. It is much better dealing with her, because she understands this legislation and she understands what we are doing.

Mr W.J. JOHNSTON: The amendment seeks to delete the line and insert the words "section 79BB(2), 79BCB(2) or 79BCE(2)". Line 14 on page 2 of the original bill refers to "section 79BB(2) or 79BCB(2)". What the minister is effectively adding is "or 79BCE(2)". If I am wrong, please let me know straightaway, because the minister has a strong view about my abilities. Proposed section 79BCB is headed "Consequences of surrender of substitute vehicle notice". Proposed section 79BCB(2) states —

If a responsible person who is given a surrender substitute vehicle notice under section 79BCA fails to surrender ...

I turn now to the seven and a half pages of amendments that the minister has presented us with. Proposed section 79BCE is headed "Consequences of surrender of alternative vehicle notice". Proposed section 79BCE(2) states —

If a responsible person who is given a surrender alternative vehicle notice under section 79BCD ...

What is the difference between those two? The clause headings are the same. It appears that there is only one letter different in the entire clause. What is the effect that the minister is asking us to agree to?

Mr R.F. JOHNSON: The member is quite right, but we are saying that the surrender substitute vehicle notice is given when the vehicle used in the commission of an offence has been released early. That is when that is used. The other one is very similar, which is, I believe, when a surrender notice has been cancelled. They are very similar.

Mr W.J. Johnston: What are you saying is the effect? What is the difference between proposed section 79BCB(2) and proposed section 79BCE(2)?

Mr R.F. JOHNSON: Almost nothing. They are very similar.

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

Mr R.F. JOHNSON: One relates to a surrender substitute vehicle notice and the other relates to a surrender alternative vehicle notice. The latter deals with an alternative vehicle.

Mr W.J. Johnston: Why is the heading the same?

Mrs C.A. Martin: This should have been sorted out before we came into the chamber. That is why the member for Girrawheen is available. She is always very helpful to everyone. I do not know why it would not have been done before we came in here.

Mr R.F. JOHNSON: Mr Deputy Speaker, I am trying to get some advice on a very technical issue that the member for Cannington has asked me a question about and I want to give him a proper answer but the member for Kimberley is rabbiting on and I cannot hear what the advice is.

Mrs C.A. Martin: I can't help it. I have an opinion.

Mr R.F. JOHNSON: The member does not normally sit here on a Thursday afternoon. It is a great pleasure to have the member here, I am sure.

Mrs C.A. Martin: That is because my electorate is so important to me and is so far away.

The DEPUTY SPEAKER: Member for Kimberley!

Mrs C.A. Martin: He started it.

The DEPUTY SPEAKER: I am not worried about who started it. Let us finish it and move on.

Mr R.F. JOHNSON: I am attempting to answer the member for Cannington's question as clearly as I can, because I know that he is interested in this. The substitute surrender vehicle notice is issued when it is an early release. If a vehicle is released early because the offender is not the owner of the vehicle or because of the early release circumstances, that is the notice that would be issued—the substitute surrender vehicle notice. The

substitute alternative vehicle notice is issued when a surrender notice has been cancelled. I know it sounds very complicated, and it is, but a lot of thought has been put into this to try to ensure fairness so that people are not treated unfairly. It covers both those areas. One is for the early release of a vehicle only and the other is the substitute alternative vehicle notice, which is used in the other circumstances.

Mr W.J. Johnston: Which other circumstances?

Mr R.F. JOHNSON: If a surrender notice has been cancelled. At the end of the day, we want to take a vehicle from an offender. If the vehicle that is impounded does not belong to the offender and, for various reasons, that is deemed to be unfair and should not happen, or it is released early, then we can use the substitute alternative vehicle notice to stipulate which vehicle that the offender has registered in his name can be impounded. That is basically what that does.

Mr W.J. JOHNSTON: Proposed section 79BCB(1)—the provision in the original bill—states —

If a responsible person who is given a surrender substitute vehicle notice under section 79BCA surrenders the substitute vehicle specified in the notice according to the notice, the vehicle is impounded by operation of this subsection for a period that commences at the time when the vehicle is surrendered.

Proposed section 79BCE(1), which is the provision the minister is proposing to insert, states —

If a responsible person who is given a surrender alternative vehicle notice under section 79BCD surrenders the alternative vehicle specified in the notice according to the notice, the vehicle is impounded by operation of this subsection for a period that commences at the time when the vehicle is surrendered.

What is the difference in practice between the words “substitute” and “alternative”? How does that create a difference? Why could the provision in proposed section 79BCB not apply to proposed section 79BCD by inserting proposed section 79BCB under proposed sections 79BCA or 79BCD? Why could it not be done that way?

Mr R.F. JOHNSON: I am advised that this was a drafting issue. The drafters felt that it needed to go there to cover all angles. It achieves the same outcome. That is the important aspect that we are looking at. What the member said is quite right. What was the other part of the member’s question?

Mr W.J. Johnston: Why would you not just amend proposed section 79BCB to include the provisions that are provided in proposed section 79BCD?

Mr R.F. JOHNSON: I am advised that it is a drafting issue. That is the way the drafters have done it. They do that for this government and they did it for the former government.

Mr W.J. Johnston: The point that the member for Victoria Park raised is that if you went back and did the bill properly, you would not end up with all these confusing drafting issues because you would do it seamlessly from the start.

Mr R.F. JOHNSON: The problem we had is that we needed to do this as soon as we physically could to ensure that innocent people did not suffer. That is the reason that we brought the amendments to this chamber. The amending bill that I introduced tried to accommodate some areas, as the member knows. The member for Girrawheen put forward some amendments, which I took on board. However, as I have already explained, in the time that I gave a commitment to look at them and hopefully introduce them into the upper house, other issues came to light. For instance, there was a case in which somebody had committed an offence and had been picked up on a Multanova camera. That person sold the vehicle and it was registered in the new owner’s name. The new owner received the impounding notice, the notice to surrender, which is totally unfair. But under the existing legislation that is what had to happen.

Mr A.P. O’Gorman: Isn’t that the point? The average person should be able to understand when and where they might lose their vehicle and when they have a right to get it back.

Mr R.F. JOHNSON: The average person would not have a clue about any of the provisions in the bill. I may well introduce a completely fresh bill. I want to ensure in the interim that innocent people do not suffer. The quickest way to do that is to pass these amendments. Hopefully innocent people will not suffer and, in the meantime, I will revisit the legislation. I had already decided to review the legislation. After the passing of this bill, we may well decide to repeal the legislation by introducing a new bill that is simpler and that covers all scenarios. I cannot do that in time to safeguard innocent people from having their cars impounded. People’s vehicles are being impounded under the former government’s original legislation. We did not seem to have any problems for six years.

Mr B.S. Wyatt: And then you came along and tinkered with it and stuffed it all up!

Mr R.F. JOHNSON: I put it on the record that those vehicles would have been impounded whether or not I made amendments to the legislation. All I did was extend the impounding period.

Mr B.S. Wyatt: And stuffed it up.

Mr R.F. JOHNSON: Look; those vehicles would have been impounded under the former government's legislation. If members opposite want to criticise bad legislation, they should criticise their own legislation. I have endeavoured to make it better and fairer legislation because of the anomalies that exist. In a few months there were three high-profile cases involving a Ferrari, a Lamborghini and a Mini Cooper. It was unfair for any of those vehicles to be impounded. I accept that, but it was not my legislation.

Mr A.P. O'Gorman: It was yours. You changed it to the 28 days. That is why problems arose.

Mr R.F. JOHNSON: They would have still been impounded, my friend, but they would have been impounded for seven days.

Mr A.P. O'Gorman interjected.

Mr R.F. JOHNSON: I accept that. Now they are impounded for 28 days. I want to make it a fairer piece of legislation so that innocent people do not suffer. If members opposite want to delay these amendments, that is fine. I can adjourn this debate and bring it back at a later date, but if I do that, I want people to know that it is because the opposition has delayed it.

Mr M. McGOWAN: Last night Parliament debated the Railway (Butler to Brighton) Bill 2009. The aim of the bill was to build a train line from Butler to Brighton. During the course of the debate, we found out from interrogating the government member responsible in this Parliament that the suburb of Brighton does not exist. Because of the parliamentary process, we became aware that the entire bill had to be redrafted because the government had drafted it on the basis of a suburb that is nonexistent. The parliamentary process has a role to play. It allows us to discover things through interrogating the government during debates in this house. The Premier's demeanour last night was great until he realised that we were making fun of legislation about a suburb that does not exist. His demeanour somewhat changed and he became slightly bad tempered. His normal humour towards the member for Mandurah's regular comedy evaporated and he started throwing barbs across chamber, which were principally directed at me.

The point that I am trying to make is that the process we are going through now is designed to iron out legislation to ensure that it is correct. I remember well the debate on the original legislation. The member for Girrawheen moved some amendments. The opposition posed a number of hypothetical situations involving the impounding of a vehicle that could cause gross unfairness to an individual or small business that had not been contemplated by the government. The only situations the government had contemplated were those involving a vehicle that was being serviced or a vehicle that was being test driven by a person who was considering purchasing that vehicle. In those circumstances, the vehicle should not be removed from the owner, whether the owner was the car dealer or the person who had put his car in for a service. Those were the only circumstances that the government had considered. We came up with other examples. For example, what about a case in which a driver of a taxi is caught hooning, but the owner of the taxi has no knowledge about it? The minister said "Oh, yeah—gee; we hadn't thought of that." What about the case of a poor mum who has no knowledge that her son is hooning in her Datsun 120Y? The minister then thought "Gee; maybe we should do something about that." What happened? To his credit, the minister said that the government had made a mistake and that the legislation should be changed. He said that he would move some amendments. Amendments are a good idea. However, the minister wants us to deal with seven and a half pages of amendments en bloc and in a short period. Some of those pages are so convoluted that it would take a Senior Counsel to interpret them, and our Senior Counsel is not here. We are expected to pass these amendments on the basis that the minister has said that they are all okay. The member for Cannington posed a simple question about these matters. The minister took a lot of advice before getting to it. We will ask questions about each amendment because that is our role. We are in this situation because the government did not consider the bill properly. That is how we were able to identify last night that we were debating legislation that involved a suburb that does not exist. That is the opposition's role. We will ask questions about each amendment and we will expect answers. If that means that the legislation is adjourned and comes on next week, that is the role of Parliament. That is what we will do.

Mr B.S. WYATT: The fact of the matter is that the minister could not answer the very first question bowled by the member for Cannington. What is crystal clear is that the seven and a half pages of amendments for this 12-page bill are creating more confusion. The minister does not know the difference between an "alternative" and a "substitute". His response was that it was a drafting error or a drafting decision. The minister bumbled his way through that. Parliament is no clearer about the issue. Then the minister said that we probably need a new bill

Mr Ben Wyatt; Mr Bill Johnston; Mr Rob Johnson; Deputy Speaker; Mr Mark McGowan

anyway because we need to protect innocent people. Innocent people are being impacted on because the government stuffed up in the first place. That is why we are dealing with amendments that seem to add nothing but confusion to the original legislation. Yesterday we had to deal with an amendment from the upper house that involved adding the word “debit” to a piece of legislation. That is what we expect when legislation comes back from the other place after it has been dealt with here. We do not expect seven and a half pages of convoluted gobbledegook. The minister himself made crystal clear from his very first answer that he cannot work out the difference between the original bill, the amendments and what the final bill will look like. The opposition is not going to sit down and say that that is okay because at some point in the future the minister is going to introduce another bill to repeal this legislation when it has taken him six months to bring in these amendments. It is absolutely incredible. The former government would not have dared to bring on this sort of claptrap.

Mr R.F. Johnson: You brought the bill in!

Mr B.S. WYATT: Yes, and look what the minister has done with it since. What is the difference between “substitute” and “alternative”? We do not know. The answer we got is that it is a drafting decision. Is that because the Interpretation Act says there is a different meaning for each word? What is the drafting issue that requires separate words that apparently mean the same thing—he is not so sure about that—but the minister has not been able to explain that to the member for Cannington?

This is not a small problem. We are talking about taking property from Western Australians who have broken the law. If we are going to pass legislation in this place that will enable property to be taken from Western Australians, we need to make sure the details are right and that the legislation is clear. The minister himself carries on about tricky defence lawyers and that when a matter is challenged in court it must stand up to scrutiny. As it stands, the minister does not know what the amendments mean; he has no idea. All he knows is that there are big amendments that apparently do something to deal with the issues raised by the member for Girrawheen. I think the member for Girrawheen is more clear than the minister about what this means. If we are going to do this—the minister has already said it means that in future we have to repeal all this and come back with another piece of legislation to make it more clear—surely the responsible action is to get rid of this and come back to the Parliament with a new second reading speech that has been looked at by the judges to see what the legislation means. This bill will create nothing but confusion. The innocent people the minister is now belatedly worrying about after the Lamborghini incident will continue to be caught because these amendments do not clarify anything whatsoever. As the member for Cannington already identified with his very first question to the minister, the minister does not know what they mean. The minister says the difference between “alternative” and “substitute” is a drafting issue. What is that drafting issue and why do they have to be different words?

Mr R.F. JOHNSON: I made it quite clear that the two notices would be issued in different circumstances. I get a sense that members opposite are going to filibuster these amendments.

Ms M.M. Quirk interjected.

Mr R.F. JOHNSON: The member for Girrawheen’s good friend the member for Mindarie has been on 6PR stealing her thunder.

Ms M.M. Quirk: I am doing a job minister, just get on with your job.

Point of Order

Mr A.P. O’GORMAN: The minister should be answering the question not playing silly buggers across the chamber.

The DEPUTY SPEAKER: I do not think you should be using language like that.

Mr A.P. O’GORMAN: The minister is avoiding answering the question by attempting to play people on this side off against each other.

The DEPUTY SPEAKER: Everyone should stop interjecting and let us try to get on with it.

Debate Resumed

Mr R.F. JOHNSON: It is obvious to me that members in the house, even members with law degrees, do not understand these amendments.

Mr B.S. Wyatt: Neither do you, that is the problem.

Mr R.F. JOHNSON: I understand the amendments, but I accept that they are in extremely lengthy legal terms. I explained that from the word go. Once members opposite see a marked copy of the bill I think all will become clear. I will ask my colleague to move that the debate be adjourned and I will arrange a briefing so that it can be explained. Members opposite can ask all the questions they want and if they see any flaws they can let us know. They want to delay these amendments.

Mr Ben Wyatt; Mr Bill Johnston; Mr Rob Johnson; Deputy Speaker; Mr Mark McGowan

Mr M. McGowan interjected.

Mr R.F. JOHNSON: We will have a marked bill some time next week so that members opposite understand it. I am trying to have this legislation passed to protect innocent people on our roads whose vehicles are being used by someone else. It is obvious what the game is of members opposite. I will not have members opposite abusing me all the time and delaying this. At the rate we are going, we do not have a hope in hell of passing it today.

Mr M. McGowan: Will you bring it back next week; is that what you are saying?

Mr R.F. JOHNSON: Members opposite can see the marked copy, so that anyone who has any questions about what the amendments before us want to achieve, they can ask the advisers, but I will not waste time today.

Debate adjourned on motion by **Mr W.R. Marmion (Minister for Housing)**.