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Extract of Relevant Debate
Confiscation of Vehicles Bill 2016

Parliamentary Debates
(HANSARD)

THIRTY-NINTH PARLIAMENT

FIRST SESSION

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LEGISLATIVE COUNCIL

Thursday, 17 November 2016

Hon ROBIN CHAPPLE: I have already made comments regarding paragraph (g). It is a very positive step forward. I think that basically concludes my issues. This has to be ratified by Parliament by 31 December 2017 so one assumes that once it has passed through this place, it will then go down for the Governor's assent. Will that occur whether or not we are in caretaker mode or Parliament has been prorogued?

Hon Peter Collier: The caretaker mode does not commence until early February.

Hon ROBIN CHAPPLE: Okay; thank you. That was a really good answer, too.

Clause put and passed.

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Clauses 2 to 7 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Peter Collier (Leader of the House)**, and passed.

ROAD TRAFFIC AMENDMENT (IMPOUNDING AND CONFISCATION OF VEHICLES) BILL 2016

Second Reading

Resumed from 9 November.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [3.22 pm]: I rise on behalf of the opposition to express our support for the Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill 2016. I will run through the basics of what this bill is about and then I will have a discussion around some of the issues.

This bill amends the Road Traffic Act 1974, the Criminal Code, the Road Safety Council Act 2002, and the Young Offenders Act 1994. It seeks to penalise drivers who commit hoon offences and impounding offences while driving, enables the impounding and confiscation of unlicensed trail bikes being used on roads, and assists police with more timely disposal of uncollected impounded vehicles. The amendments set out in the bill will enable a court to confiscate a vehicle when the driver has committed an impounding offence while driving in an active school zone or a confiscation zone where the speed limit is 50 kilometres an hour or less and the offence has resulted in either a member of the public experiencing harassment, intimidation, fear or alarm; or damage to any property, including the road. The bill provides for a penalty for the driving of a vehicle at 90 kilometres an hour or more above the speed limit; that is set out in clause 34. The bill also provides that when a driver has been convicted of an impounding offence committed in a confiscation zone, and has within the preceding five years been convicted of another impounding offence, also committed in a confiscation zone, the vehicle used in the offence will be confiscated unless extreme physical or financial hardship to a person other than the driver can be proved. That is set out in clauses 30 and 34.

The bill seeks to replace the existing, very broad, reckless driving provisions in section 60 of the Road Traffic Act with separate provisions that incorporate new reckless driving offences that are committed in circumstances in which a court would be able to confiscate the vehicle under proposed new section 80A, which is covered under clauses 6 to 10. It also provides that any reckless driving and speeding convictions that occur prior to the amended RTA coming into effect can be counted as a prior conviction with regard to the new confiscation offences as set out in clause 46.

The bill provides that an unlicensed motorcycle that is used or is reasonably suspected of having been used on a road in contravention of section 4(2) of the Road Traffic (Vehicles) Act 2012, and has not been licensed for road use in the previous two years, will be subject to confiscation as set out under clause 44. The bill also provides that a person who has the right to possession of the motorcycle that has been impounded pending confiscation may make a claim to the Commissioner of Police for the possession of the motorcycle.

There are a couple of other changes, and I say to the house that unfortunately, because of timing this week and where this bill lined up, my briefing for this bill is actually scheduled for 9.30 tomorrow morning. I say hello to the advisers who have joined us this afternoon; I am sure the minister will correct any gaffes I make today, based on the fact that I have not had a briefing. I have just outlined the basics that I thought were in the bill.

Hon Peter Collier: I shall be gentle!

Hon KATE DOUST: Just for a change!

There are a couple of other changes that kick in with this bill that will be of great assistance to the police in dealing with impounded cars. I understand, based on the second reading speech, that more than 11 000 vehicles have been

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impounded over the last year and 1 700 are currently awaiting collection. That is, in anyone's language, a significant number of cars coming off the road. There has been a series of these bills going back to about 2003–04. When I read the *Hansard* of the other place, it was interesting to note that my colleague talked about the first piece of such legislation that was debated was when Labor was in government under the leadership of Geoff Gallop. The original legislation dealing with the confiscation of vehicles did not receive full support when it came to this place. Former members Hon George Cash, Hon Peter Foss and Hon Derrick Tomlinson opposed the legislation and, if I think back to their capacities, I imagine it would have been a very lengthy and detailed debate, expressing their views and why they opposed it. It is quite interesting to see how, after the passage of time, we continue to have these arrangements in place. In fact, we have continued to see a tightening of these arrangements over the last few years, in some cases quite controversially. There was the situation a few years ago in which a bloke who was supposed to be repairing a Lamborghini took it for a test drive and was pinged by the police and the car was confiscated. That was quite a difficult situation for the owner and some variations to the legislation had to be made. I think there have been two or three bills over the last couple of years dealing with hooning and the confiscation of cars. The fact that 11 000 cars have been confiscated demonstrates that there is still a significant problem in the community. Somehow or other, the message has not yet got through to individuals who persist in speeding in low-speed zones, such as school zones. Albany Highway in Victoria Park is a 40-kilometre-an-hour zone, and I am sure that the police pick up a few people travelling over that speed. People do burnouts and hoon down side streets. I have made this remark before, but I live in Victoria Park, so it is not an infrequent thing for me to hear police sirens chasing a car, or someone doing a burnout in front of my house. Quite often there are black marks on the crossroad between Axon Avenue and Sunbury Road, close to my house. We have taken some neighbourhood interventions, if you like, to try to prevent hooning in our local streets, and it seems to be working quite well.

Hon Rick Mazza: They're not vigilantes, are they?

Hon KATE DOUST: No, not vigilantes. We make sure that there are enough cars parked on the street at particular angles so that when drivers come down the hill, they have to slow right down or they will clean up cars. They have actually cleaned up a couple of cars; usually it means replacing very expensive side mirrors and things like that, but we do what we have to do because people take shortcuts.

<028> T/1

On a quiet night, some people still like to pretend they can still burn a bit of rubber. The point is that in addition to putting in place these sorts of mechanisms whereby when people break the rules, the police take that very hard line of saying, "Listen, if you're not going to adhere to it, you're obviously not going to have a car to drive", there still needs to be even more emphasis on education at the source of the problem so that people understand that extremely punitive measures will be put in place if they continue to break the law and participate in these types of activities. It will be interesting to see perhaps 12 months after this bill goes through what sort of data there is and whether there has been any decline in the number of cars picked up or those that stay impounded. Ultimately, the police under this legislation will now have the capacity to deal with those uncollected impounded vehicles.

This bill, from memory, also gives the government or the police in this case the capacity to recoup the costs from these cars through scale and put that money back into the road trauma trust fund to be used for a variety of purposes. It is a reasonably significant piece of legislation with quite a lot of detail, but pretty much what I have explained provides the bare bones of the change. I might still go to my briefing tomorrow, Attorney General, to make sure that I have covered all the bases.

I provided the Attorney General with a copy of some correspondence that I received earlier this week via email. I received this letter on 15 November, which was at a fairly late stage. It was not received by our shadow Minister for Police in the other place, Michelle Roberts, because the Legislative Assembly had already dealt with the bill. I have spoken to our shadow Minister for Police and said that I would raise this matter. I received this email from Mr Steve Pretzel, who is part of the—I have to read this very closely—recreational motorbike riders association, I think.

Hon Michael Mischin: Recreational Trail Bike Riders' Association.

Hon KATE DOUST: Even with glasses I cannot read that because it is very small, so thank you for that.

I will put what he said on the record. I know that when the Attorney gives his reply to the second reading debate, he will respond to this letter, because he has raised a number of concerns and proposed a couple of amendments to the bill. I would be interested to see the Attorney General's view on this. He says —

> I am writing to you seeking your urgent intervention to prevent the passing of the above Bill in the Legislative Council in its current form.
>
> The Recreational Trailbike Riders' Association of WA Inc represents the interests of an estimated 50,000 trail and quad bike riders and their families in Western Australia.
>
> We do not condone the riding of unregistered motor vehicles on suburban roads.

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> We do, however, have serious concerns about judicial fairness and proportionality of Sections 80O and 80T of the proposed legislation which we have articulated below.

The first point he raised in this letter is —

> **1. Confiscation Manifestly Excessive in Some Circumstances**
>
> The proposed legislation is effectively a 'one strike' system whereby a person's property (which in many cases would be valued in the thousands of dollars) can be permanently confiscated on first offence. This is too harsh a penalty for many circumstances which could best be described as 'victimless crimes'—for example a family enjoying an afternoon's ride on quiet bush trails in state forest away from residential areas.
>
> Legislation with harsh penalties should target behaviour that has obvious and serious public safety risks. Unregistered motorcycles may be illegal on all public roads, but the real nuisance and danger lies in the manner in which they are being ridden.
>
> Elsewhere in the proposed legislation, the term 'hooning' is associated with reckless driving and riding. We submit that this is equally relevant in the confiscation provisions of unregistered trail bikes.
>
> To cover the offence of illegal riding where an element of recklessness is not present the current offences of riding without a licence—the Road Traffic Act 1974 S49—and riding an unregistered vehicle—Road Traffic (Vehicles) Act 2012 S4(2) would continue to apply.
>
> Additionally, the intent of the legislation is "*to address the increasing number of complaints police are receiving about the danger, noise and disruption caused by unlicensed and in the majority of instances, un-roadworthy motor cycles being used for recreational purposes on our roads and public open spaces.*"

He has taken that directly from the second reading speech. The letter continues —

> We submit that the legislation should be constrained broadly to those locations that are subject to such complaints—namely suburban or residential areas. It may be convenient to rely on the definition of 'Confiscation Zones' as defined in the new legislation at S49AA. A more relevant definition may be considered in the alternative.
>
> Accordingly we seek amendments to Section 80O of this legislation, as set out below …

Attorney General, I will read through it so that it is on the record. The proposed amendment to section 80O is listed in the document and it states —

> 80O. Police power to impound unlicensed motor cycle used on road
>
> (1) This section applies if a police officer reasonably suspects that —
>
> (a) a motor cycle is being used on a road **within a 'confiscation zone' as defined under the Road Traffic Act 1974 (as amended) Section 49AA';** and
>
> (b) The use constitutes an offence under the Road Traffic (Vehicles) Act 2012 section 4(2); and
>
> (c) the motor cycle was not, at any time during the period of 2 years immediately before the day of the use —
>
> (i) licensed under the Road Traffic (Vehicles) Act 2012; or
>
> (ii) the subject of a permit, or number plates, issued under the Road Traffic (Vehicles) Act 2012 section 13.

Paragraph (d) is a new element —

> **(d) The motor cycle is being ridden in a reckless manner as defined in the Road Traffic Act 1974 S60(1) or 61(1)**

Attorney General, I will hand this to Hansard later so that they can pick up all the relevant commas and full stops. The next point he refers to in this letter is "Judicial Process". The letter states —

> The proposed Bill involves automatic forfeiture, on first offence, on the 'reasonable suspicions' of a police officer. The law as it is proposed would reverse the WA Government's burden of proof of guilt and be vulnerable to abuse. Magistrates or judges should decide legal claims, not the police commissioner.
>
> Accordingly we seek amendments to Section 80T of this legislation, as set out below …

The Attorney General would have seen the letter I gave him; the amendments are in bold type. The letter outlines the amended proposal —

> 80T. Confiscation

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> **(1)** A motor cycle impounded under this law is **formally 'confiscated' only after a hearing before a magistrate, who must find guilt, confirm the confiscation and order the motor cycle to become the property of the state only after a 28-day period for appeal of the magistrate's decision expires:**

Steve Pretzel then proposes deleting proposed sections 80T(2) and (3) and inserting a new section 80T(4), which would state —

> **(4) If a motor cycle is confiscated under subsection (1), the property in the motor cycle vests absolutely in the State, free from all interests, rights, titles or claims in or to the ownership or possession of the motor cycle**

He then writes —

> The RTRA submits that the proposed amendments restore some judicial fairness and proportionality, without detracting from the Bill's intended purpose of significantly reducing incidents of illegal riding that cause public nuisance and danger.
>
> We urge you to support our position and to send the Bill back for amending or reconsideration of the issues raised.

He then goes on to make some comments about contacting him.

A significant part of this legislation deals with those matters around motorcycles. It is a shame that the members of the National Party are away on urgent parliamentary business, because I thought that this matter might have been of interest to them given that in regional areas and the farming sector motorbikes and quad bikes are used frequently not only for work purposes—obviously, we find examples of young people using those types of vehicles not always in a licensed arrangement. It would have been interesting to have heard from someone from that party about whether any of their constituents were concerned about these amendments that were being made and the potential impact in regional areas if there are incidents and bikes are confiscated.

<029> B/J

I know the minister will provide a response to that. It is a real shame this correspondence from the Recreational Trailbike Riders' Association has come in quite late. I suppose my question is: given the types of changes that have been brought in, what type of consultation will have occurred with stakeholders prior to drafting this bill? I appreciate Hon Michael Mischin is not the minister responsible, but perhaps the advisers can provide that information. I would have thought this type of association would have a significant membership throughout the state and would have had the opportunity to have some input into these changes before the bill was brought into the house. It is probably very difficult at this point; I imagine the government does not have a huge appetite to amend this bill as it stands to deal with those issues. If the government wants to, we will give consideration to supporting the amendments. I think they are asking for a fairer go in their circumstances and perhaps to see the issue managed differently from what is set down in the bill. I wanted to get that on the record and to outline some of the key changes.

As I said earlier, these issues continue and bills continue to come before us that try to curtail, contain or stop this type of activity. I am sure other members receive the same correspondence as I do. We regularly get phone calls, emails and letters from constituents about people "hooning up and down their streets", usually in cars, and on occasions on motorbikes. The most complaints come from the newer suburbs away from the city. Perhaps people have reasons for seeking to entertain themselves with a bit of speed—in cars, not with drugs—so hoon around for their entertainment. Every time I get complaints I take them up with the Minister for Police to seek her advice on what can be done to resolve the issues. We have also taken them up with a range of local governments in the south metropolitan area to see whether some traffic impediments can be installed or some engineering changes made to the streets that might change behaviour. There is still a long way to go. I do not know what we can do. I do not think there is a silver bullet to stop people from doing this. Someone will always want to give these things a go. I do not know whether people are incited to behave this way or are trying to push the envelope by speeding, making a noise or doing burnouts.

I can recall many years ago going to an event in the wheatbelt area at what was called the Kwolyin pub. I do not think it exists anymore. It was a lovely old pub in the middle of nowhere near Kellerberrin. There was a vacant lot of land across the road from the pub where a bloke got into his ute. He was not a young man; he would have been in his forties, close to his fifties and I think we were in our very early twenties then and were recovering from a B&S ball the night before.

Hon Michael Mischin: Happy memories.

Hon KATE DOUST: No; I do not think that particular one was a very happy memory. It is just coming back.

Hon Michael Mischin: I thought you were getting wistful there for a moment.

Hon KATE DOUST: I remember a couple of interesting conversations with farmers about trade unions. They were very interesting.

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Hon Michael Mischin: And lived to tell about it.

Hon KATE DOUST: Yes, barely. I remember watching this fellow go round and round in circles in his ute, burning up, creating dust everywhere; it was crazy. He had obviously come out of the pub before he did it. I understand that it was standard activity for that guy. Back in the 1980s we did not have this type of legislation in place. Maybe we did not have to think about how to deal with these issues. There was no thought of calling the police to tell the guy to pull his head in, be sensible and stop doing it.

Hon Michael Mischin: It could have been the local sergeant, for all you know.

Hon KATE DOUST: No; it was the local farmer. I would hate to think it was the local sergeant in those days. There was nothing there to stop that type of event. People stood and watched it. Tragically, I think he did it once too often and did not survive. He had an accident as a result of this hooning. That was very difficult.

As time has moved on and we have become more aware of the problems associated with it, it is not about people just using excessive speed or causing damage to property but it is about causing damage to individuals or homes. A number of weird incidents have occurred here in WA, particularly in the city, of people driving cars into houses. I do not know whether that would be defined as hooning under this bill.

Hon Michael Mischin: It would be defined as dangerous driving.

Hon KATE DOUST: Yes, dangerous driving. There have been a number of them in the northern suburbs.

Hon Phil Edman interjected.

Hon KATE DOUST: That is correct; someone could have lost control of a vehicle. That is not necessarily hooning.

Hon Phil Edman: Something happened recently where an elderly person lost control

Hon KATE DOUST: Yes. There are a number of issues.

Although the government continues to try to deal with this issue by tightening the legislation, giving the police better capacity to deal with the number of impounded cars and redirecting that revenue into the road trauma trust account, which is sensible, I do not understand why we missed that opportunity the last time we dealt with this legislation. Sometimes we need to do a bit of a whiteboard exercise about what happens with this and how it affects that—a Suzanne's approach of this goes with this and that goes with that—rather than the piecemeal approach we take to these types of issues.

With all that said, we do not oppose this bill. We understand the community concerns and acknowledge a significant message needs to be sent to these individuals to prevent them from performing the activity or that if they do perform this activity, they will not be doing it for very long because they will not have a car or motorbike to do so. The concerns raised by the Recreational Trailbike Riders' Association are quite possibly legitimate. It is a shame its concerns have come in so late. If the government is not prepared to entertain anything today, once the bill is passed, perhaps some discussion could be held with that group about a commitment to look at its circumstances on another occasion.

I do not have much more to say on this. It is a moving feast and we will see how it works. As I said earlier, it will be interesting to see whether the changes that will be put through today will have any sort of impact over the next year or so when we measure the effectiveness of this legislation.

The ACTING PRESIDENT: Order! There is an audible conversation going at the moment.

Hon KATE DOUST: Thank you. But I think a lot more still needs to be done to promote the negative aspects of so-called hooning. Confiscating someone's car or motorbike is like clubbing a seal but sometimes we have to take the hard line. I do not mean to say that to offend my colleagues, the Greens, but sometimes we have to take a particularly hard line to get people —

Hon Robin Chapple interjected.

Hon KATE DOUST: We are supporting the bill; I am having difficulty getting the language out at the moment. The bottom line is Labor supports this bill.

<030> F/J

HON RICK MAZZA (Agricultural) [3.49 pm]: I rise to make a few comments on the Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill 2016. The bill basically covers two main parts, with one part to do with the impounding and confiscation of vehicles. A lot of confiscated vehicles are not worth a lot of money—often the recovery and impoundment costs far exceed the cost of the actual vehicles and they remain unclaimed. Of course, that is a significant cost to the state. I agree with Hon Kate Doust that unfortunately it does not matter how tough we are on hoon laws and the confiscation and impounding of vehicles, there is always going to be that element who will continue to hoon drive. I would have to say that if everybody around this chamber were being honest, they might at

times in their youth have done things they should not have. There needs to be a real cultural change in some way to try to reduce the number of deaths that occur on our roads, particularly with hoon driving.

The other part of the bill is to do with unlicensed motorcycles. I assume that the real intention of this amendment is to cover those people, particularly young people, who scream around suburban streets and parks on unlicensed motorbikes. They are a menace. There was a death going back three or four years ago when a very young unlicensed trail bike rider sprang through a set of lights without any lights on his motorbike, and there have been other things as well. It is a major worry. Sometimes small unlicensed motorbikes are ridden by people who are not so young and they cause a lot of issues within suburban areas. I sympathise, though, with the Recreational Trailbike Riders' Association of WA. I think everybody here received a letter from the association, representing its 50 000 members. Quite often a lot of these groups will go into state forest. As I understand it, it is not technically legal to do that. Even though it might be a family day out with mum, dad and the kids riding some motorbikes in a relatively remote area, often these state forests do have gazetted roads, so there is the possibility—the unintended consequence—of somebody being on a gazetted road, being stopped by police and having those trail bikes confiscated. I am concerned about that.

I know that the Nats are not here, Hon Kate Doust, but I am here to represent the regions. There is also the issue of farm bikes. A lot of farmers have an old trail bike in their farm sheds that they use for rounding up sheep or whatever. They will go from farm to farm and sometimes need to cross roads. Technically, yes, they should be registered to be on those roads, but it is not always the case. I think it would be pretty harsh for a farmer who crossed a road to maybe get to another paddock to round up sheep or cattle to have their motorbike confiscated. I wait to hear from the minister about the measures that may be in place to cover those circumstances when people are generally law-abiding but may inadvertently come to grief with the possibility of having their motorcycle confiscated. In general, the Shooters, Fishers and Farmers Party will support the bill.

HON LYNN MacLAREN (South Metropolitan) [3.52 pm]**:** I want to begin by thanking the department for its briefing on the Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill 2016, which was actually way back on 29 August in a marathon briefing session—I think we did three bills in one go. I did take copious notes at that time, and I am in support of the legislation before us.

Like members who spoke before me, I, too, have received a letter from the Recreational Trailbike Riders' Association of WA and I have spoken with Steve Pretzel, the president of that association. It is important to note that the reason the association was not able to comment on this bill earlier was that I understand Steve was on jury duty during the debate in the lower house, so the association was not able to mobilise its concerns at that time. The only point I wanted to raise in the second reading debate is that I would dearly love government to engage in more fulsome consultation before it gets to the point of legislation. This is clearly one of the key stakeholders in trying to stop unlicensed trail bike riding on the roads and should have been included in the drafting of the legislation and the strategies that the government identified to be able to stop this from occurring. We need to learn how to sit down together and discuss problems in order to arrive at solutions together. In this instance, the fact is that it is the eleventh hour and this association has written to members of the upper house with some very serious concerns about disproportionate penalties and fear of unjust confiscations. I think all of this could have been avoided had that trail bike association been included in the beginning, so that it knew how the legislation would be implemented and so that its concerns would at least have been acknowledged. It might even have been able to engage its membership in learning about the new rules that are going to be implemented, because at the end of the day we do not want to confiscate vehicles—this bill is all about the problem that confiscation causes. Once something is confiscated, something has to be done with it.

One thing this bill will do is to enable the Commissioner of Police to sell a vehicle that has been confiscated in the event that the owner gives him that permission. The problem is that confiscated vehicles are piling up, causing even more problems and more expense than we could ever have imagined. That is why we support this bill—to try to facilitate a much more effective process of moving through any property that is confiscated for illegal use, and not having the burden of storing it and looking after it after a due process of ensuring that the vehicle cannot be legally returned to its rightful owner. Unfortunately at this late stage we have heard that the Recreational Trailbike Riders' Association is concerned about the potential heavy-handed approach of this legislation and its impact on first-time offenders. I know we are about to hear from the Attorney General as to how the government will respond to that, but this could have been dealt with well before it got to this stage. I would hope that the association will be onside with the implementation of this bill and will encourage its riders to load up their trail bikes on trailers to get them to some place where they can ride them. Like most people in this chamber, I have had friends who like to ride off-road. It is the easiest thing in the world to just hop on one's bike and just go down a block or two or whatever to get to a trail. That, unfortunately, is an illegal act. What we are trying to do is ensure that that kind of dangerous activity is curtailed. We do not want to see unlicensed trail bike riders on the paths and endangering pedestrians. We are all in unanimous agreement with that, and I would think that even the Recreational Trailbike Riders' Association would be in unanimous agreement with that, because it wants to ensure that it has a good membership that remains healthy and safe all the time they are using off-road bikes.

I will use this time just to say that I would really like to see this law implemented in a fair way and that we are able to inform those people who are going to be directly affected by it so that they can ensure their activities are not found to be illegal and they do not lose their trial bike. There is a reason we have an ability for people to have unlicensed trail bikes, so let us make sure that they can continue to do that safely in the areas they are permitted to do that, and that road users also act legally. In the event that they do not—if somebody does try to break the rules and puts themselves and others in danger—and we have to impound their vehicle, I hope that the vehicle will move through the system with equal efficiency to ensure that it is not a burden to the state.

With those brief words I want to thank all other members who have commented on this bill. Sometimes people forget that the role of the upper house is that of the house of review. In this instance we have been able to capture at the very end of a bill's process some really important concerns and to raise them in this chamber. I look forward to hearing the government's response to those concerns so that we know we are actually making a difference in the jobs that we do. I want to thank Steve for contacting us all at the last minute and for raising his concerns, and for not being afraid to say, "Hey, I think there might be something that you guys missed here." This is our opportunity to ensure that he feels like we are governing for him as well by passing this bill today.

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HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [4.01 pm] — in reply: I thank the members for their contribution to the debate and for their indications of support for the Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill 2016. By way of assistance to Hon Kate Doust, I, too, have received a copy of the letter to which she referred, dated 14 November. Of course, it has not given an enormous amount of time for the contrary views of the Recreational Trailbike Riders' Association of WA to be agitated and also to have an influence on this bill, which has taken a bit of time to craft. It has already been fully debated in the other place where a variety of the issues raised have been covered, albeit not directly. I will come to dealing with that in a moment, but perhaps by way of assistance and completeness I am happy to table a copy of the letter that I received, dated 14 November, which I think is a duplicate of the ones that have been received by other members, so that anyone who wishes to have reference to it, certainly Hansard, can reflect it accurately. I seek leave to table the document.

The ACTING PRESIDENT (Hon Liz Behjat): You do not need to seek leave. That document is tabled.

[See paper 4907.]

Hon MICHAEL MISCHIN: That solves that problem!

We will have to have to differ with the Recreational Trailbike Riders' Association of WA. The merits of the bill have been fully understood and canvassed by the members, explaining that they have understood the purpose of it, but what we are trying to address here with unlicensed trail bikes is the problem not necessarily of the way that they are ridden, but the fact that they are unlicensed vehicles that are being ridden on roads. Being unlicensed, it is difficult to track them down and they can be used for a variety of purposes, some of which is legitimate, if they are used off-road and in the places where they were meant to be used, but an increasing number of these vehicles are being used by all manner of people of all ages on roads. We are not trying to target the people who are using it off-road in country areas, but those who are using them on urban roads. I will give three examples—I was reluctant to do so, because we can always think of examples of legitimate use as well as illegitimate use—just on the limitations on the amendments that are proposed by the association, and I will get to the detail of those in a moment. Recently, an employee of the police legislative service area observed a motorcycle rider riding an unlicensed 250cc trail bike along Lord Street in an 80 kilometre-an-hour zone near Reid Highway, and the rider was not wearing a helmet. If the amendments proposed by the Recreational Trailbike Riders' Association were to be adopted, the behaviour would not be covered by the legislation as the motorcycle was not being ridden in a confiscation zone, nor was the motorcycle being driven in a dangerous or reckless manner. Although it may appear a dangerous and reckless thing to do, that conduct would not be enough to substantiate a charge. It is a vehicle that is not designed for being ridden on a road, or at the very least is not licensed and is being ridden by someone for their own convenience on a road. At the moment, it is difficult enough to track them down and to deal with them at the best of times because they have no licence plate, for a start, or it has been removed. However, when they are tracked down, they can be charged with a variety of offences, but they still have the vehicle and they can very well do it again. Unfortunately, we have people who think that they will continue to get away with it or the chances of being caught are limited and if they do get caught, they know enough about the system in order to simply go and do it again.

Another example, recently published in *The West Australian*, highlighted several instances of trail bike riders riding along various dual use footpaths adjacent to the carriageway where the speed limit was 60 or 70 kilometres an hour. Remember that the carriageway itself is only part of what is considered the road in law; it goes from the two property lines. In one instance, the motorcyclist came close to a woman pushing a pram. The motorcycles used in these instances would also not be seized as the sign posted speed limit exceeded 50 kilometres an hour, bodes an unlicensed vehicle. Who knows how many times this particular person thought it was a fun thing to do to ride that vehicle in a manner that ought not to be used? Recently an approximately 8-year-old girl—by observation—was riding a small motorcycle in Melville, near Tompkins Park, down the road that heads towards the footpath while her father was

teaching her how to ride the motorcycle. Although she was under instruction, the manner she was riding would not have come under the provisions of reckless or dangerous driving, therefore would not be subject to confiscation. Therefore, this parent thought it was a good idea to let his kid use a public road in an urban area as a training ground for an unlicensed vehicle. He may get away with it, but at some point he may very well be caught, and when that happens, he will lose his bike. If it costs him a few thousand dollars to replace, maybe he will be a bit more careful and responsible in the future. We are all aware of the sort of behaviour in the evenings when someone decides to take their unlicensed trail bike, probably without a muffler, and drive around a neighbourhood because they think it is a fun thing to do and the chances of getting caught are minimal. That may be right, but if they are going to get caught, they will suffer more than a fine; they will lose their property and can consider that.

Dealing with the detail of it, the whole objective of this particular element of the legislation was to address a social problem. In the lead-up to the 2013 state government election, the government, as part of its Liberal government plan to fight crime in our suburbs, promised to —

> Immediately and permanently confiscate a trail bike which is not licensed for road use on a first offence (unless the bike is stolen or not the offender's or their parent's property).

Those who were interested in reading about what the government's intentions are were well aware in 2013 what the purpose of this was. At the time it was explained as part of an initiative to deal with the then nuisance social problem. The legislation required to implement this commitment has been incorporated into this particular bill, and was passed by the Legislative Assembly on 8 November. It is currently awaiting completion of debate here before it takes effect. However, there has been ample time for those who have been interested in this to raise their concerns about it, particularly if they are concerned about the fundamentals upon which this legislation is based. The Recreational Trailbike Riders' Association is concerned about the possible effects on their membership, and I will come to that in a moment. However, briefly, the particular subdivision of the bill provides that when a police officer has a reasonable suspicion that a motorcycle has not been licensed for road use, or subject to a permit in the preceding two years, and is ridden on a road in contravention of sections 4(2) of the Road Traffic (Vehicles) Act 2012, it can be seized and confiscated, irrespective of whether anyone is charged with the offence.

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Once it has been seized, however, the responsible person for the motorcycle will be able to make an application to the Commissioner of Police seeking the return of the vehicle. If the commissioner accepts the claim, the motorcycle will be returned; otherwise, it will be confiscated and subsequently disposed of in accordance with the remainder of the act. The Recreational Trailbike Riders' Association of WA is concerned that this is unfair and that it is effectively what it calls a one-strike system whereby a person's property can be permanently confiscated on a first offence. It uses the example of a family enjoying an afternoon's ride on a quiet bush trail in state forest away from residential areas, and I will get to that in a moment, but currently the police are not interested in quiet trail bike rides in state forests far from residential areas. They do not police that at the moment; they do not go out there searching for people with unlicensed trail bikes now. The objective of this bill is to deal with riders in urban areas, particularly those who ride vehicles on roads where they ought not to be in the first place. It goes beyond simply the manner in which these vehicles are being ridden.

To remedy the problem, certain amendments have been proposed. I will not go through them but they are not supported. They would largely negate the government's intention in introducing this legislation and the objectives were understood and, as I understand it, broadly supported in the other place and by the members and the parties in this place. The primary concern of the government and Western Australia Police is to protect members of the community from the dangers involved with riding unroadworthy motorcycles on public roads, carriageways and dual-purpose footpaths. If it was to be limited to confiscation zones, this legislation would have a very limited application and police would not have the powers needed to satisfy its intention. The association's suggestion that the real nuisance and danger lies in the manner in which these vehicles are ridden suggests that it has misunderstood that intention. It should be noted that if a person were to ride a motorcycle in a manner that constitutes reckless or dangerous driving, that would be the charge that would be laid against them. These vehicles ought not to be ridden at all if they are unlicensed and hence potentially unroadworthy, at least not on roads. What people do on their private property is entirely a matter for them.

I have given some examples of what would not be covered were the proposed amendments introduced. The amendment to proposed section 80T would negate the purpose of the legislation, and, again, is not supported. One factor is that if that proposal were to be accepted, the majority of the people who would be involved in this behaviour may very well be under the age of 18 years old and come within the ambit of section 29 of the Criminal Code in respect of the age that someone is criminally responsible, or under the Young Offenders Act whereby the matter would be referred to a juvenile justice team. If that occurred, there would be no conviction for the offence of riding an unlicensed motorcycle and, therefore, that vehicle would not be confiscated. One of the problems that is being faced by people in urban areas is that children are riding these unlicensed motorcycles that ought to be used, if at all, off-road or on private property, but they are being used on public property and, in particular, on public roads.

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Regarding the suggestions for exemptions from confiscation, if the vehicle were a parent's vehicle, for example, confiscation would be a legitimate consequence for those who are unprepared, unable or unwilling to prevent their children from engaging in the use of what can be a dangerous weapon in a public place. If they are not prepared to ensure that the use of these vehicles, like firearms or any other dangerous object, is controlled, they will just have to suffer the consequences.

The inclusion of a specific provision to allow for judicial review is not necessary. Currently, any administrative decision can be reviewed by appeal to the Supreme Court in any event. On the advice that we received from the State Solicitor's Office on the legality of the confiscation of unlicensed motor vehicles, there is no impediment to the confiscation of this property either with or without conviction.

Debate adjourned, pursuant to standing orders.

[Continued on page 58.]

Sitting suspended from 4.15 to 4.30 pm

<033> I/C

QUESTIONS WITHOUT NOTICE

ESPERANCE BUSHFIRES — DEPARTMENT OF FIRE AND EMERGENCY SERVICES — FREEDOM OF INFORMATION REQUESTS

1341. Hon SUE ELLERY to the Leader of the House representing the Premier:

I refer to investigations into the fires at Esperance in November 2015.

(1) Is the Premier aware that a series of freedom of information requests to the Department of Fire and Emergency Services by persons acting on behalf of Esperance fire victims have attracted substantial fees imposed, even though that information would be readily at hand in order for DFES to prepare its evidence for the pending coronial inquiry?

(2) Given the department's statutory obligation to facilitate access, would the Premier consider instructing the minister to consider waiving the FOI access fees; and, if not, why not?

Hon PETER COLLIER replied:

I thank the honourable member for some notice of the question. The response is —

(1)–(2) This question should be redirected to the Minister for Emergency Services.

I might follow up on that.

Hon Sue Ellery: Yes. The Premier is responsible for FOI.

LANDS — NICHOLSON ROAD — PROPOSED TRAIN STATION

1342. Hon SUE ELLERY to the parliamentary secretary representing the Minister for Transport:

I refer to claims by a member in the other place that previous governments had intended to remove the Canning Vale section from the metropolitan railway network.

(1) As at September 2008, what steps had been taken to sell the land at Nicholson Road needed for a railway station?

(2) In what year was the revenue anticipated from the sale of the land?

Hon JIM CHOWN replied:

I thank the honourable member for some notice of this question.

(1) The Public Transport Authority is not aware of any steps taken to dispose of any land associated with the proposed train station near Nicholson Road, noting that the land was acquired by the Western Australian Planning Commission in 1997 and continues to be held by the commission, not the Public Transport Authority.

(2) Not applicable.

ST IVES MURDOCH RETIREMENT VILLAGE — INVESTIGATION

1343. Hon KATE DOUST to the Minister for Commerce:

I refer to resident complaints referred by the Premier to the Department of Commerce in March 2016 in relation to St Ives Murdoch retirement village.

(1) Can the minister confirm that the department met with several residents regarding these complaints in April 2016?

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QUESTION ON NOTICE 4489

Paper Tabled

A paper relating to answer to question on notice 4489 was tabled by **Hon Donna Faragher (Minister for Planning)**.

ROAD TRAFFIC AMENDMENT (IMPOUNDING AND CONFISCATION OF VEHICLES) BILL 2016

Second Reading

Resumed from an earlier stage of the sitting.

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [5.03 pm]: I seek leave to resume my remarks at a later stage of this day's sitting.

[Leave granted for the member's speech to be continued at a later stage of the sitting.]

Debate adjourned, on motion by **Hon Peter Collier (Leader of the House)**.

[Continued on page 58.]

BUSINESS OF THE HOUSE — TUESDAY, 22 NOVEMBER 2016

Standing Orders Suspension — Motion

HON PETER COLLIER (North Metropolitan — Leader of the House) [5.04 pm] — without notice: I move —

> That so much of the standing and temporary orders be suspended as to enable the following variations to sitting times of the order of business on Tuesday, 22 November 2016 —
>
> (a) the Council to meet at 1.00 pm; and
>
> (b) that questions without notice be taken at 3.30 pm, or at a time appointed by the Council.

This has been done in consultation with all parties. We have been such an efficient chamber that we have got through pretty much all our legislation at this stage that we intended to get through before the house rises. We need to get through a couple more bills, a disallowance motion and three valedictory speeches. The intent of this motion is to commence a little earlier, at 1.00 pm on Tuesday. That will allow time to complete all the outstanding legislation and the disallowance motion and for valedictory speeches to be given by Hon Peter Katsambanis, Hon Paul Brown and Hon Amber-Jade Sanderson. That will be followed by questions without notice, possibly at 3.30 pm or whenever we finish the other formal business. That will be followed by comments from the President and party leaders. I anticipate that the house will rise late Tuesday afternoon.

As I said, it has been done in consultation with all parties who are in agreeance with these arrangements. Because question time will definitely be earlier, can members please have their questions in by 10.00 am on Tuesday. That will come out from the question office as well, but if members can have their questions in by 10.00 am on Tuesday, that will give departments time to respond.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [5.06 pm]: This does indeed reflect arrangements reached behind the Chair. I take on board the Leader of the House's point and give our commitment concerning questions without notice—we are happy to provide them by 10.00 am. I make this point: often in the past, when the other place is not sitting, it has been difficult to get answers from ministers from the other chamber. Equally, I encourage the leader to raise this with his colleagues at the cabinet meeting on Monday. It would be helpful if answers can be provided.

Question put and passed with an absolute majority.

ROAD TRAFFIC AMENDMENT (IMPOUNDING AND CONFISCATION OF VEHICLES) BILL 2016

Second Reading

Resumed from an earlier stage of the sitting.

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [5.08 pm]: I will wind up my remarks concerning the Recreational Trailbike Riders' Association. I have already canvassed most of the material raised, but generally in the correspondence from the association, concerns were raised about possible restrictions that the Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill 2016 might have on the use of motorcycles on quiet bush trails and state forests away from residential areas. I suppose we could debate whether quiet bush trails should be disturbed by the sound of motorcycles. But the fact is that the police do not police those trails currently. If they receive a complaint about behaviour, they look into it. If a specific complaint is made about riders behaving in a manner to endanger other users of the state forest, police will investigate it and take appropriate action in those circumstances, as they currently do and will do in the future. However, enforcing the use of licensed or unlicensed vehicles on those trails is not something that is currently engaged in nor will it be done in the future.

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The intent of the legislation and the Western Australia Police is to enforce and address not only reckless behaviour but also antisocial behaviour of riders of unlicensed motorcycles on public roads, which has the potential, if not the fact, of endangering, harassing, intimidating and alarming other road users, such as pedestrians, cyclists and children, and of disturbing the peace. It is highly unlikely that members of the Recreational Trailbike Riders' Association of WA engaged in lawful activities would come to the attention of the police at all. I accept that the association has concerns about the bill. The government does not accept that they are well-founded concerns or that any amendment or revisiting of the legislation is warranted at this time. Of course, if it turns out that there has been some unforeseen circumstance or consequence of the legislation, that will be addressed with alacrity. On that note, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

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

BILLS

Assent

Message from the Governor received and read notifying assent to the following bills —

1. Retail Trading Hours Amendment Bill 2015.
2. Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2016.
3. Royal Perth Hospital Protection Bill 2013.

BILLS

Returned

1. Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016.
2. Statutes (Repeals) Bill 2016.

Bills returned from the Assembly without amendment.

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW — STATUTES (REPEALS) BILL — *HANSARD* RECORD

Statement

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [5.12 pm]: I rise tonight to correct the *Hansard* record. On Tuesday night when we were dealing with the Statutes (Repeals) Bill 2016, I made reference to some work that the Standing Committee on Uniform Legislation and Statutes Review had been engaged in in relation to the National Electricity (Western Australia) Bill 2016, the Energy Legislation Amendment and Repeal Bill 2016 and the National Gas Access (WA) Amendment Bill 2016. I made the comment during that discussion that —

> At that point and all the way through that period, I will say to members that, from my perspective as a Labor Party member, we did not have a position on the bills. Now our position, which has been clarified through our shadow cabinet and our caucus, is that we support the bills.

I apologise to the house. It was not my intention to mislead the house, but I spoke in error. I just need to clarify that situation. The Labor Party has not yet formed a view nor made a decision on any of those three bills; I was in error. Currently, the status quo is that we do not have a position.

ETHIOPIA — OROMO PEOPLE

Statement

HON ROBIN CHAPPLE (Mining and Pastoral) [5.14 pm]: I rise tonight to speak on behalf of the Oromo community in Mirrabooka, and I acknowledge Professor Nuru Said, president of the Oromo community in Western Australia. The incessant brutal crackdown and atrocities committed by Ethiopian government forces against the Oromo people in Ethiopia are extremely disturbing, with the killing and torture of innocent Oromo people who peacefully protest against political repression, economic exploitation, eviction from land, mass arrest, torture and killings. This issue has been close to my heart as the Greens WA strongly believe in peaceful protest. Since 12 November 2015, the Ethiopian government has murdered over 700 innocent Oromo people, including children, elderly people, pregnant women, students, teachers, farmers, women and workers, who were peacefully protesting

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