



Speech by

## Robert Messenger

MEMBER FOR BURNETT

Hansard Tuesday, 28 November 2006

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### **POLICE POWERS AND RESPONSIBILITIES AND OTHER LEGISLATION AMENDMENT BILL AND POLICE SERVICE ADMINISTRATION AMENDMENT BILL**

**Mr MESSENGER** (Burnett—NPA) (8.29 pm): This amended legislation before the House is here because the Queensland community wants to decrease the injuries and stop the senseless deaths on our state roads. After examining the 58 clauses and 41 pages and reading the minister's second reading speech and explanatory notes, it is my and the opposition's opinion that this legislation will contribute to that very worthy goal of decreasing injuries and saving lives, and for that reason I congratulate the minister on her legislative effort. However, that is not to say that this legislation is perfect and cannot be improved upon. After all, as pointed out during the opposition's briefing, we were advised by staff of the police minister's office that this proposed Queensland vehicle impoundment and forfeiture legislation was unique in Australia and represented a major initiative in this area. Therefore, I and my conservative colleagues are looking forward to the debate and contribution of all members, particularly during the consideration in detail stage when we will get the opportunity to examine this legislation in greater detail.

I intend to introduce a small but, I believe, important and significant amendment to this bill to properly and carefully evaluate the results of the trial of the impoundment and forfeiture of property belonging to or used by an offender prior to the extension of these legislative provisions across the state. The amendments proposed in the bill were developed from matters raised at the government's Road Safety Summit held at Parliament House in February of this year. The key provisions of the bill are that the bill reclassifies certain vehicle offences for which confiscation provisions can apply into type 1 and type 2 offences. Type 1 offences are the previously so-called hooning offences such as street racing, burnouts, excessive noise et cetera. The new type 2 offences, which in certain circumstances can be subject to a vehicle being impounded or forfeited, include the offences of repeat drink driving—that is over the limit of .05—disqualified or unlicensed driving, driving in an unlicensed vehicle and driving an illegally modified vehicle.

If a driver has been charged or found guilty of a type 2 offence on a second or subsequent occasion, the vehicle can be subjected to impoundment or forfeiture as follows: at the second offence the vehicle may be impounded for 48 hours. At the third offence police may apply to court for a three-month impoundment order. The court must consider any defence arguments such as severe financial or physical hardship. At the fourth offence police may apply to court for an order that the vehicle be forfeited. The court may grant the order, make a further order for impoundment or make it an order for the driver to perform community service. The bill shifts liability for initial impoundment costs from the state to the offending driver, except in cases where the driver is a child or the driver is found not guilty of the offence. The potential costs of vehicle impoundments to the state were a significant flaw in the original anti-hooning laws. Amendments to other legislation include the extension of immediate suspension provisions to drivers charged with the dangerous operation of a motor vehicle when allegedly exceeding their permissible blood alcohol level.

The legislation is designed to target hooners and rev heads and is designed to take away their cars and make the road a safer place for families and Queenslanders who want to drive in a lawful manner. If we want to be brutally honest, when the minister says in her second reading speech that it is approximated that 18,000 vehicles will be impounded under the provisions over each of the next years—and I think that a major proportion of those vehicles impounded will belong to young men—why is it that some young men succumb to the temptation to spend all of their money and time on hotted up cars fitted with loud sound systems and to hoon and some do not? I will have to rely on personal experience, because I remember when I bought my first car. I was about 17-years-old at the RAAF base in Wagga Wagga in New South Wales. I borrowed \$2,000 from the bank and a group of mates and I took off one Friday afternoon and headed to Sydney. We slept in the middle of Parramatta Park on our sleeping bags. I had the money in my pillow and the next morning we bought the paper and hunted for that second-hand car. To this day I am still grateful to a good RAAF mate of mine who had an extremely old and wise head on a pair of young shoulders. He convinced me to buy the stock standard white Holden HJ six cylinder 173 three-in-the-tree bench seat with a standard set of roadworthy tyres instead of the black Ford V8 with the sunroof, the 350 Chev four-on-the-floor, bucket seats and the fat baldy tyres. No matter how logical and sensible the choice now seems almost 30 years later, I still remember the feelings and thoughts I had as a 17-year-old of wanting to impress members of the opposite sex with the car as I handed over the \$2,000 for the stock standard Holden and how close I came to buying the black Ford V8.

My mate, who was older than me and a more experienced driver, then taught me how to drive safely in city traffic where road conditions were foreign to me. He helped supervise and allowed me to get my confidence. As a young lad growing up in the bush, I learnt to drive farm vehicles on dirt roads, so I was lucky to have a good skills base to start from. The lessons that I have taken from these significant life experiences are that, in order to reduce the road toll, as well as having strong legislation which will in effect target young people we also need to ensure that our young drivers are properly mentored and trained.

The best way that that kind of lifesaving training could be delivered is at driver training centres such as the facility at Gympie. The Roadcraft Driver Education Centre is located on the southern outskirts of Gympie, as my colleague from Gympie would well attest. The centre, which is fully equipped to supply a complete range of driver education courses with classroom facilities for teaching safe driving theory and a well laid out track incorporating a skid pan for practical driver training sessions, has made an important contribution to a safe road environment through its innovative program of courses aimed at producing safety conscious road users of all ages and all levels of driving expertise. At present quite a lot of Bundaberg and Burnett high school students through their schools have been travelling to Gympie to participate in this driver education program.

It was the Queensland coalition's election commitment earlier this year to build a new driver education centre in Bundaberg for our youths which was pushed by the member for Bundaberg, Mr Jack Dempsey. The driver training program would have been an asset to our region's economy considering that it has been estimated that around 900 year 11 students travel to Gympie every year to participate in this course. It would mean that those 900 students every year would participate in the program locally, with approximately \$200,000 being injected into our local economy. I am sure that there are a lot of other regional areas in Queensland where a similar situation and similar needs exist where large numbers of students travel out of town to receive a good grounding in driver education.

I am aware that those driver training facilities cost significant amounts of money to build and to run. But, on the other side of the ledger, they undoubtedly would save lives by instilling in young people the right attitude and imparting the right skills. The recent tragic car accidents and loss of life on Queensland roads has further focused my mind and prompted me to think about ways to provide better driver education through the establishment of regional driving centres. I believe that the states have a responsibility to make sure that communities are helped to build these facilities.

Because of new fines and sales of impounded vehicles, the legislation before the House will raise significant amounts of revenue. I am looking forward to hearing from the minister in her summation. Perhaps she could provide further details on the projected amounts of revenue. I would like to see some of that money set aside for the development of regional driver training centres.

I also believe that the private sector, particularly the car makers and the racing industry, have a moral and social responsibility to help fund, run, resource and promote regional driver training centres. They are the people who profit from the business of racing modified, hotted-up cars or legalised hooning. Of course, the car racing business is marketed as a very glamorous occupation. Quite a skilled advertising campaign accompanies that racing. Of course, the implicit message being sold in all advertising that is hitting our young drivers, particularly our young mens' minds, I believe, is that if someone drives a hotted-up car and hooners around the road fast enough they will become famous, have lots of ladies chasing after them and have plenty of expensive alcohol to drink in front of a crowd of cheering people. I think it only fair that the private sector, which makes enormous profits from the car racing business, as well as the government should invest in driver education, especially the education of young drivers.

This legislation also toughens up our state's laws when it comes to alcohol related driving offences. In her second reading speech the minister said that the bill provides for a type 2 vehicle impoundment scheme. This scheme provides that if a repeat offender is the driver of the vehicle who commits the same kind of the following offence—driving under the influence of alcohol—the legislation will strengthen penalties for repeat drink drivers by confiscating offenders' vehicles for 48 hours for two offences inside three years or for three months for further offences. It is an attempt to deter drivers from getting behind the wheel under the influence of alcohol.

The *Sunday Mail* has examined this issue in detail in recent days and has asked the question of its readers: are our state laws tough enough to deter drink drivers? The readers reached the conclusion that our state laws are not tough enough. The editorial on page 57 highlights a message that we should all be supporting—when it comes to drink driving, the evidence is that tough laws work and that tougher laws work even better.

Our road toll is growing relentlessly. During last year alcohol was involved in 35 per cent of fatal crashes. That accounts for 114 lives. The newspaper also asked the question: how many lives must be lost to serial drink drivers before we ban them for life? That question was asked by Elisa Lawrence on page 11. It paints a very grave picture of the current crisis that we are facing on our roads.

The *Sunday Mail* statistics reveal that we are not getting through to drink-driving offenders. The majority end up becoming repeat offenders. The statistics show that the number of repeat drink-driving offenders has been steadily increasing since 2003. In 2003, repeat offenders accounted for 888 offences. In 2006—up to 10 November—the number has shot up to 1,255. That is a massive 40 per cent surge in drink-driving offences in just three years.

What more can we do to get through to the menaces on our roads? The *Courier-Mail* suggests that a lot more can be done. Seventy-five per cent of visitors to its web site, as of 2.30 pm Monday, 27 November, who took part in answering an online poll which asked the question, 'Do you think repeat drink drivers should be stripped of their vehicles and licences for life?' believe that we need harsher penalties to fit this crime and, as such, answered 'yes' to this question.

Charles, of London, who commented online to the *Sunday Mail's* story, puts it succinctly when he states—

Point a gun at someone and kill them and it is called murder, but do the same with a car and it's called an accident. That drink drivers are repeatedly caught just shows they either do not get the message or don't care about the potential consequences. Driving is not a right, it's a responsibility, and those who can't behave responsibly should not be allowed to drive.

It is a simple but blatantly true message: driving is not a right but a responsibility. Why should the lives of our loved ones be placed in danger by those few but increasingly irresponsible drink drivers who fail to care about the safety of those around them? It is, sadly, the innocent who are ultimately paying the price for those reckless, selfish drivers. What cost can we put on a human life?

Another online comment of significance was posted by Tony Graham of the Australian forensic drug testing service, who states—

This comes as no surprise to those who work in this area. Substance abuse involving alcohol and other drugs is a sad feature of our society. Alcohol, as a legal drug, is readily available, and our culture is one that encourages its use, in some quarters bestowing hero status on those who abuse it. Repeat offenders will continue to be just that until the cycle is broken. Research shows that ever increasing penalties are an ineffective deterrent for more entrenched offenders. It also demonstrates that while naming, shaming and punishment is an effective deterrent for some, the most cost-effective means of dealing with substance abuse is education, awareness and rehabilitation. The conduct of programs in schools, tertiary institutions, workplaces and as part of rehab programs for those convicted of drinking and driving must be the primary plank in any platform directed towards addressing repeat offending behaviour.

Should drug driving be included as a type 2 offence? I am interested to hear from the minister on that question. I know that this legislation bans multiple drink drivers, but what all Queenslanders would like to see is legislation that also targets drug drivers.

The International Council on Alcohol, Drugs and Traffic Safety is an independent not-for-profit body whose goal is to reduce mortality and morbidity brought about by the misuse of alcohol and drugs—licit and illicit—by operators of vehicles in all modes of transportation. The findings in the last 10 years—that is, up to May 2000—of those driving under the influence of legal drugs appears to be increasingly common amongst those arrested for driving under the influence, but it is less frequently detected, discouraged or treated when compared with drink driving. In Australia, the Victorian parliamentary Road Safety Committee held an inquiry into the effects of drugs other than alcohol on road safety investigations of fatally injured drivers from 1995-96. It revealed that 27 per cent had drugs other than alcohol present that may have affected their driving performance.

The Victorian government has produced an informative web site titled Arrive Alive, which provides information about driving under the influence of alcohol and drugs. Of particular interest, it dispels a number of myths about drugs and driving, which I would like to share with members. Myth No. 1: 'Drugs don't affect my ability to drive.' The illicit drugs can affect a person's ability to drive by causing impaired coordination, muscle weakness, impaired reaction time, poor vision, an inability to judge distance and

speed, and distortions of time, place and space. The active component of drugs such as cannabis—called THC—impairs mental function and reduces attention and concentration on the driving task. THC significantly increases the risk of a crash, even when there are no extreme outward signs of impairment. Speed, ice or crystal meth—or the methamphetamine in ecstasy, the MDMA—increase risk taking and aggression. Speed is often used by drivers to temporarily allow them to continue to drive even though they are too tired to do so safely.

Myth No. 2: 'I'm safe when I drive while affected by drugs.' Increasingly, drug use is associated with road crashes and driving fatalities. People may think they are safe, but the statistics tell the real story. Drug driving is a major cause of road deaths in Victoria. In 2003, a total of 31 per cent of drivers killed in Victoria tested positive to drugs other than alcohol. Research also shows that a driver who has recently consumed cannabis or an amphetamine based substance is at the same risk of having a crash as a driver with an alcohol concentration above 0.05.

Myth No.3: 'Drink driving is a much bigger problem.' Drink driving is a major community issue, but so is drug driving. In 2003, 28 per cent of drivers killed had a blood alcohol content of .05 or more. In the same year, 31 per cent of drivers killed tested positive to drugs other than alcohol. Recently I commissioned parliamentary research into this issue. It is excellent research. The paper reports that drug driving, like drink driving, is treated as an offence of driving under the influence. If a police officer suspects that a person's driving ability has been impaired by substances such as drugs or alcohol, the police officer may require that person to undergo a blood test. Drugs can impair a driver's ability to drive safely by causing poor motor and coordination skills, impaired reflexes, blurred vision, an inability to judge distance and speed, fatigue, memory loss, distortions of time, place and space, nausea and vomiting, dizziness and fainting, and aggressive or psychotic behaviour.

Queensland legislation relating to driving under the influence of drugs or drug driving is contained within the provisions of the Transport Operations (Road Use Management) Act 1995, which is affected by this legislation, specifically in section 79(1), which states—

Driving etc. whilst under influence of liquor or drugs or with prescribed concentration of alcohol in blood or breath

(1) Any person who whilst under the influence of liquor or a drug—

- (a) drives a motor vehicle, tram, train or vessel; or
- (b) attempts to put in motion a motor vehicle, tram, train or vessel; or
- (c) is in charge of a motor vehicle, tram, train or vessel;

is guilty of an offence and liable to a penalty not exceeding 28 penalty units or to imprisonment for a term not exceeding 9 months.

Further statistics show that 51 per cent of motorists admit to often driving within three hours of taking prescription medicine. Nationally, nine per cent of drivers admit to having driven while under the influence of recreational drugs. Insurer AAMI's 2004 crash index revealed that 14 per cent of Queensland motorists admitted driving after using drugs, including marijuana, cocaine, speed, or ecstasy. Secret government testing has revealed that one in 25 Queensland drivers is high on drugs behind the wheel while preliminary data exposes Queensland roads as minefields full of potentially deadly encounters with drug-affected drivers. The state government is finishing preparation for next year's random drug-driving tests. The shocking data shows that motorists are almost four times more likely to test positive to the recent use of cannabis, speed, or ecstasy.

**Ms SPENCE:** I rise to a point of order. This legislation is not about drug driving. We have heard from the shadow minister for 10 to 15 minutes about drug driving. This legislation is about a lot of things—it is big, groundbreaking legislation—but it is not about drug driving. I think the shadow minister has made the point that he would like to see drug driving included in the legislation. I am happy to respond to that, but I think to go on for 15 minutes about drug driving when the legislation does not even mention it is laborious, boring and unnecessary.

**Madam DEPUTY SPEAKER** (Ms Jones): Order! There is no point of order. I ask the member to speak to the bill. You have spoken for a significant amount of time but not about the bill.

**Mr MESSENGER:** The police minister also told the *Courier-Mail* that 24 specialised police would take saliva from drivers by putting a swab similar to a cotton bud in their mouth. The swab will be mixed with a chemical solution that identifies the constituent that causes a high, such as THC in cannabis—

**Madam DEPUTY SPEAKER:** That is not relevant to the bill. You are going to have to make the rest of your speech relevant to the bill.

**Mr MESSENGER:** I note that there are concerns and questions expressed in the Scrutiny of Legislation Committee's latest report. I ask that the minister address these issues in her reply.

Does the bill allow the delegation of legislative power only in appropriate cases and to the appropriate persons? Section 79B of the Transport Operations (Road Use Management) Act 1995, not yet

in force, provides that a person's driver's licence is immediately suspended in several specified sets of circumstances. Clause 55 of the bill inserts into the act proposed section 79E, which relates to one such set of circumstances, namely, where the person has been charged with driving a motor vehicle whilst under the influence of liquor or charged under the Criminal Code with the dangerous operation of a motor vehicle when the person is over the alcohol limit. Section 79E(2) provides that, subject to certain conditions, a person whose licence is immediately suspended in that set of circumstances may make application to a court for an order authorising the person to continue to drive motor vehicles pending a hearing of the charge in stated circumstances. Most of the significant details of this application process, including the persons who are eligible, how an application is to be made, the criteria to be used, the types of restrictions imposed, the duration of orders and the consequences of failure to comply with an order are to be determined by regulation made under section 79E(4).

Given the significance of these matters, a question arises as to why they could not have been stipulated in the act itself rather than being left to regulation. The Scrutiny of Legislation Committee noted that clause 55 of this bill established a process whereby a person, whose licence had been immediately suspended because of particular charges under the Transport Operations (Road Use management) Act 1995, can apply to the court for an order to be allowed to continue driving pending the hearing of the charge. The committee also noted that under proposed section 79E(4), most of the important details of that process were to be determined by regulation. Given the significance of these matters, the Scrutiny of Legislation Committee seeks information from the minister as to why they could not be included in the act itself rather than being left to regulation.

This is a cognate debate: the Police Service Administration Amendment Bill is also being debated. I see this legislation as an important tool to fight all sorts of crime, particularly organised crime. Once this legislation is passed police will have the power to fight crime. The legislation aims to clear any doubt about the legal basis on which the Queensland Police Service discloses certain types of information through the national CrimTrac agency—such as criminal history information to media outlets, other police services and, in some cases, to private industry as well. For the overall protection of the community, I wholeheartedly support this amendment bill.

On the issue of organised crime and its prevalence in Queensland, I would like to introduce to parliament some of the findings of the Scrutiny of Legislation Committee on the Police Service Administration Amendment Bill. In response to the question, 'Does the legislation have sufficient regard to the rights and liberties of individuals?', the committee noted that clause 8 of the bill inserts proposed section 10.2A, which is the release of criminal history information in relation to employment screening; section 10.2B, which is the disclosure of criminal history for assessing suitability for diversion programs; and section 10.2D, which is the disclosure of information to the media by direct data feed—all of which expressly authorise release of information by the Commissioner of the Queensland Police Service in particular circumstances. In the first two cases the affected person's consent is required. In the circumstances, the committee stated that it does not consider the provisions of clause 8 to be objectionable.

In response to the question, 'Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively?', the committee noted that proposed section 10.2F validates disclosures of information of certain types dealt with by the bill. The committee made no further comment in relation to that.

**Mr Schwarten:** We can all read that, you know. We are all literate. We can read the Scrutiny of Legislation Committee report.

**Mr MESSENGER:** Thank you, Madam Deputy Speaker Jones, for your protection. The amendments proposed in the bill were developed from matters, as I said, raised at the government's Road Safety Summit held at Parliament House in February this year. The opposition intends to support the bills.