

Hon Nick Goiran; Hon Stephen Dawson; Deputy Chair; Hon Aaron Stonehouse; Hon Rick Mazza; Hon Martin Aldridge

ROAD TRAFFIC AMENDMENT (IMPAIRED DRIVING AND PENALTIES) BILL 2019

Committee

Resumed from 24 June. The Deputy Chair of Committees (Hon Dr Steve Thomas) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Clause 2: Commencement —

Progress was reported after the clause had been partly considered.

The DEPUTY CHAIR: Members, we are now dealing with issue 5 of supplementary notice paper 147.

Hon NICK GOIRAN: We are now on issue 5 of the supplementary notice paper; another one has been snuck in this morning. The matter currently before the chamber is clause 2. There is no change to the supplementary notice paper with respect to the motion that I have foreshadowed with regard to clause 2. At this time, I move the amendment standing in my name at 2/2 —

Page 2, after line 10 — To insert —

(2) However —

- (a) if no day is fixed under subsection (1)(b) before the end of the period of 10 years beginning on the day on which this Act receives the Royal Assent, this Act is repealed on the day after that period ends; or
- (b) if paragraph (a) does not apply, and a provision of this Act does not come into operation before the end of the period of 10 years beginning on the day on which this Act receives the Royal Assent, the provision is repealed on the day after that period ends.

By way of explanation to members, the amendment that is currently before the chamber is what I would describe as the “Mischin amendment”. It is the amendment that was first crafted by Hon Michael Mischin and has now, over recent bills, become somewhat customary. It is a useful amendment that will ensure that if we have a situation, as we have here, in which the government is asking us to agree to, effectively, allow it to determine when the various provisions of the bill will come into operation, there is some restraint on that power—that is, if it does not use the provisions within a 10-year period, those provisions will be repealed. In actual fact, in this instance, the entire act will be repealed because the only operative parts will otherwise be sections 1 and 2. It is an amendment that the chamber has agreed to beforehand. I hope that it will receive the support of members, particularly in light of the significant revelation made last night just before the house rose that, as it so happens, notwithstanding the false and inaccurate information that had been distributed yesterday in the public domain in the media release on 24 June and the apparent desire to move swiftly on a bill that has been sitting on the notice paper since November last year, we found out that the government still has further work to do and it is not anticipated that the key parts of this bill will become operative for another six to 12 months, other than the infamous radar detection matters, which may take at least two months to put in place. I hope that in the context of all of that that members will agree that it is not at all unreasonable for this chamber to simply say to the government, “Well, we do hope you do something within the next 10 years; and, if not, this particular legislation will be repealed.”

Hon STEPHEN DAWSON: I place on the record that the government is committed to proclaiming the provisions in this bill as soon as possible. The proposed amendment moved by Hon Nick Goiran does not affect the substantive provisions of the bill, so given that and given that we consider that it is unnecessary, we will not oppose it.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 3 to 38 put and passed.

New clause 38A —

Hon STEPHEN DAWSON: At the outset, I will clear up the issue with issues 4 and 5 of the supplementary notice paper. This morning I received, as did other members of the chamber, an email from the clerk assistant advising that the supplementary notice papers correct an earlier transposition error. That was the first I knew about it, but I am very grateful to the clerk assistant for picking that up. Obviously, the amendment to insert new clause 38A on issue 5 of the supplementary notice paper is the one I am moving. I move —

Page 61, after line 16 — To insert —

38A. Part 5B inserted

At the end of Part VA insert:

Part 5B — Radar detectors

81G. Offence to drive motor vehicle with radar detector fitted to, within or on vehicle

(1) In this section —

radar detector means a device or other equipment that is capable of detecting the operation of —

- (a) an average speed detection system as defined in the *Road Traffic (Administration) Act 2008* section 117B(1); or
- (b) speed measuring and recording equipment as defined in the *Road Traffic (Administration) Act 2008* section 117(1); or
- (c) speed measuring equipment as defined in the *Road Traffic (Administration) Act 2008* section 117(1).

(2) A person must not drive a motor vehicle on a road if the vehicle —

- (a) is fitted with a radar detector; or
- (b) has a radar detector within or on the vehicle.

Penalty for this subsection:

- (a) for a first offence, a fine of 64 PU;
- (b) for a second or subsequent offence, a fine of 96 PU.

This new clause will insert a new part 5B into the Road Traffic Act 1974. It contains a new section 81G. This new section 81G will give effect to the government's stated position to ban the use of radar detectors and vehicles. It was planned based on State Solicitor's advice that this would be achieved through regulations once the amendments in clause 41 of the bill had been passed. I note, obviously, that Hon Rick Mazza is seeking to oppose clause 41 when we get to it and I also note that the Liberal Party in the other place has indicated that it is opposed to clause 41. I also know from talking to Hon Nick Goiran, and others, behind the Chair that they will oppose it in this place.

The government is acting to address this crucial road safety issue by amending the Road Traffic Act 1974 to specifically ban radar detectors. As we canvassed yesterday, Western Australia is well behind the rest of the country in relation to radar detectors. For over 20 years now, the use of radar detectors has been banned in the rest of Australia and we believe this reform is long overdue. Contrary to what some people may say, there is no evidence to support the notion that the use of radar detectors has a road safety benefit. Radar detectors are used to enable drivers to speed without detection. If drivers are compliant with the speed limit, there is no need for radar detection devices. Fifty-two people—32 per cent of the road toll—died in speed-related crashes in 2019. I am told there is a clear relationship between speed and crash outcomes; for example, a five per cent increase in mean speed leads to around a 10 per cent increase in all injury crashes and a 20 per cent increase in fatal crashes. Research into the effect of mobile speed detection devices has found that they are contributing towards almost a 12 per cent reduction in fatal crashes. The use of radar detectors clearly impacts on the effectiveness of mobile and fixed speed detection devices. The penalty provisions in new section 81G reflect the maximum penalties that apply under regulation 9(2) of the Road Traffic Code 2000 for the majority of offences under that code.

The safety of our roads is paramount. Too many people die or are seriously injured on them each year, and so I urge honourable members to support the amendment that I have moved.

Point of Order

Hon NICK GOIRAN: I draw to the Deputy Chair's attention standing order 134, "Admissible Amendments", which states —

- (1) Any amendment may be moved during consideration in Committee of the Whole House to any part of a Bill, provided the amendment —
 - (a) is within the Subject Matter of the Bill;

It goes on to provide the necessity for amendments to fall within the scope of the standing order, but it is that standing order that I specifically draw the Chair's attention to now. I respectfully submit to the Chair that the amendment moved by the honourable minister is not within the subject matter of the bill. As the Chair will see, the heading of the new clause is "Part 5B"; in other words, it is a new part titled "Radar detectors" to be inserted in the act. I believe that the matter is outside the subject matter of the bill because if one looks at the second reading speech, one will understand what is the scope and purpose of the bill that is before the chamber and whether an amendment will fall within the subject matter of the bill.

This chamber has a long history of rulings made by Presiding Officers in this respect. In particular, I draw to members' attention the ruling of Deputy President Ford made in 2002 and the ruling made by President Cash

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in 2006. In fact, President Cash made several rulings in 2006. In particular, one was made that is found in the 2006 *Hansard* at page 7841. I specifically draw to your attention, Mr Deputy Chair, the final paragraph. It reads —

I raise those issues because I believe that they are relevant to our considerations in committee.

Under standing orders —

... a committee may make an amendment to a bill if the amendment is relevant to the subject matter of the bill; that is, it must fall within the scope and purpose of the bill as it was second read. It is not sufficient that an amendment fall within the title of the bill, which in many cases simply recites that the bill is one to amend a particular parent act.

In this instance, the long title of the bill is “An Act to amend the Road Traffic Act 1974 and to make consequential and other amendments to various Acts.” Clearly, the amendment before the chamber would fall within the scope of the long title. However, as the ruling has indicated in the past, that is not sufficient; that is not the test. The test is: what was the policy of the bill and what was the scope of the bill as it was second read? I have taken the opportunity to do a word search of the second reading speech, and the words “radar” and “detector” and not even the word “speed” come up in the second reading speech. Why is that? The reason is that that is not the purpose of the bill. This bill has been commonly described outside of this chamber as the drug-driving bill. It is a bill for which the primary purpose is to deal with drug-drivers. It is nothing to do with radar detectors whatsoever. There is no mention of that in the second reading speech from the search that I have conducted. There was no reference at any time to the words “radar”, “detector” or “speed”. For all those reasons, I ask you, Mr Deputy Chair, to give due consideration to whether this amendment is in breach of standing order 134.

The DEPUTY CHAIR (Hon Dr Steve Thomas): In relation to that point of order, and in particular the application of standing order 134, I make the following comments. Standing order 134 provides that any amendment may be moved to any part of a bill, provided the amendment is within the subject matter of the bill. Schedule 3 of the standing orders defines “subject matter of a bill” as —

... the provisions of the Bill as printed, read a second time and referred to the Committee of the Whole House ...

The minister has proposed an amendment to the bill to include new clause 38A, which inserts an offence to drive a vehicle with a radar detector fitted to the vehicle. A review of the bill shows that all clauses, except one, amend or relate to part V, division 2 and 2A of the Road Traffic Act. Those divisions relate to alcohol and drug-related offences. The minister’s second reading speech addressed matters relating to the issue of drugs and alcohol and driving and, relatedly, the taking of bodily samples. However, there is one clause in the bill that is broader and contains a regulation-making power empowering the government to make regulations to —

... regulate or prohibit, or anything that is necessary or convenient to be prescribed to regulate or prohibit —

- (i) using a vehicle with a device attached to, or removed from, the vehicle; and
- (ii) using or possessing a device while a person is within or on a vehicle.

This clause contemplates the regulation of the use or possession of devices in or on a vehicle. A member in scrutinising this clause would ordinarily turn their mind to whether they wish for the regulation of devices in or on vehicles to form part of the statutory scheme. Although the focus of the minister’s second reading speech was on issues of drugs and alcohol and driving, the principal question about whether a matter is within the subject matter of the bill must be answered from an analysis of the text in the bill. Although the minister’s amendment is much more specific than proposed new section 111, my ruling is that the regulation of devices attached to or used in vehicles falls within the subject matter of the bill and that the amendment is in order. Honourable members, it is my view that if the amendment was not in order and was not related to the bill, we would not see the amendments that we can see on the supplementary notice paper. By that inference, I make the ruling that the amendment is within bounds.

Committee Resumed

Hon AARON STONEHOUSE: I have a couple of questions for the minister on this amendment. Is it the government’s intention, if the amendment is successful, to then oppose clause 41 and therefore not include the amendments to section 111?

Hon STEPHEN DAWSON: If this amendment is passed, we will support Hon Rick Mazza’s amendment on the supplementary notice paper.

Hon AARON STONEHOUSE: I have one more question on this. We now have some clarity about exactly what the government wants to do by having an amendment to ban radar detectors in the primary legislation, as opposed to doing it through regulations, which may take months before they are drafted and implemented. Is this the first time in Western Australia that a bill has been brought forward to ban radar detectors? I am trying to understand the

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history of this because, by the comments of the Minister for Police, there is an inference that there has been a roadblock to banning radar detectors and that the commonsense approach is to ban them because everybody else has and that we have made a mistake by not doing that. I have gone back through *Hansard* to try to find references to any bills, legislation or debate on radar detectors, but aside from a couple of offhand remarks in adjournment statements, I could not find much record of it in the *Hansard* of the Parliament of Western Australia. Is the minister aware of any attempts by this government or perhaps even by a previous government, when legislation was brought on to ban radar detectors?

Hon STEPHEN DAWSON: Certainly, it is the first time that this government has brought forward this issue and I am not aware of previous attempts to change it.

Hon RICK MAZZA: I am pleased that the government has narrowed the scope of what it is trying to achieve on radar detectors with this legislation, but I will be opposing this amendment because the main reason we were given for this change was that other states have done it, so we should do it too. At the moment, Western Australia has a hard border; we are not letting anybody else in. Western Australia is standing alone as a state and has its own will, yet we have this provision because other states, like the “socialist state of Victoria”, which by the way has had terrible problems with its coronavirus management, have banned radar detectors. I think the legislation we pass in this state should be evidence based. During debate on clause 1 last night, questions were asked about what research or evidence there is that radar detectors contribute to road trauma. The information I got back was that there is none. There is some research on speed cameras that indicates that speed could contribute to 12 per cent of road trauma, but there is no evidence on the use of radar detectors. I do not know that we should ban something when there is absolutely no evidence to suggest that it contributes to road trauma at all. We are very quick to ban things. It is an assumption that this may cause road trauma. On that basis, Mr Deputy Chair, I will not be supporting the amendment.

Hon AARON STONEHOUSE: I draw the minister’s attention to clause 2, “Commencement”, which states —

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation ...

Of course, that clause was amended by Hon Nick Goiran’s amendment. If the rest of the act comes into effect on a day fixed by proclamation and if this amendment is agreed to, when does the government intend to proclaim this new part? When will it be proclaimed and when can we expect these bans to come into effect?

Hon STEPHEN DAWSON: In relation to clause 2 of the bill as it stood before the amendment, it did say that the rest of the act would come into operation on a day fixed by proclamation and that different days may be fixed for different provisions. I want to clarify that. In relation to when the radar detector provisions may be proclaimed, in an earlier answer to Hon Nick Goiran, I suggested that it may take about two months for the work to be done on regulations for those provision so that we can proclaim it.

Hon AARON STONEHOUSE: To clarify, because I am a little confused, I thought two months was the time required to write regulations, and that is how the minister just described it. Presumably, that would be under an amended proposed section 111(1) and the government would rely on the regulation-making head of power to ban radar detectors. If we accept the government’s amendment, that will be done through the primary legislation and that ban would come into effect as soon as possible after that new part of the act is proclaimed. I am not too sure why it would take two months. Of course, it may be sensible to provide some kind of implementation delay so that people have time to learn about the new ban and remove those devices from their cars, and perhaps people who have ordered them would have a chance to cancel those orders or seek a refund. Let us be clear that it will take two months to implement the regulations. If this amendment is successful, what is the government’s intention for proclaiming this new part of the act?

Hon STEPHEN DAWSON: If I can be clear, the regulations that I spoke about are the Road Traffic (Administration) Regulations 2014 that require amendment to allow us to deal with the issues of demerit points, infringements and modified penalties. Those are the regulations that we would be required to change.

Hon AARON STONEHOUSE: If I understand the minister right, despite new clause 38A creating the ban in the primary legislation, it will still require consequential regulations to other acts to deal with the penalty side of things, and that will take about two months to come into effect. That makes sense to me but can the minister give me an indication of when the government, if it is successful with its amendment, intends to proclaim new part 5B and implement the ban so that road users using radar detectors have some idea when they will have to remove those devices?

Hon STEPHEN DAWSON: We intend to bring them into being as soon as we possibly can. My advice is that it will take two months to make changes to those things I addressed previously. I will place on the record that there really is only one reason a person would use a radar detector, and that is to avoid getting caught speeding, essentially.

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Hon NICK GOIRAN: Minister, that depends on how “radar detector” is defined. Can the minister confirm the scope of the definition before us at proposed section 81G(1)? For example, if a car is currently fitted with a GPS navigation system that alerts a driver that they are approaching a fixed speed camera, would that fall in the scope of proposed section 81G(1)?

Hon STEPHEN DAWSON: I am told that if these pieces of equipment are capable of detecting speed detection devices, they are captured.

Hon NICK GOIRAN: Minister, what is a Western Australian resident supposed to do if their motor vehicle already has a navigation system? In fact, the minister might have a motor vehicle; not everybody travels by bicycle. Those of us who drive a modern motor vehicle know that it is quite customary that they are fitted with a navigation system that lets the driver know when they are approaching a fixed camera. What would the McGowan government love its Western Australian residents to do in the next two months to ensure that they are not inadvertently breaching this law, which the government has snuck in over the last 24 hours?

Hon STEPHEN DAWSON: The navigation systems that the honourable member talked about that I have in my car and potentially he has in his car can inform the driver; they cannot detect.

Hon Nick Goiran: That was my original question. Can the minister explain the scope of this definition?

Hon STEPHEN DAWSON: No, they are not.

Hon Nick Goiran: Okay; then we have nothing to discuss.

Hon STEPHEN DAWSON: Sure.

Hon AARON STONEHOUSE: I thank Hon Nick Goiran for pursuing this because it is something I had not picked up on yet. We are really relying on the word “detect” and how that is interpreted because there is no definition of “radar detector” in the bill—the detection of the radio emissions that a speed camera using radar would emit. It is a little concerning because if we take a very broad interpretation of “detect”, we would think that that might include the ability to identify, or to inform about, the presence of one of these cameras because there is no reference in the definitions in the bill to the detection of radar. As long as the minister is absolutely certain in this case that the navigation devices that are standard in most cars and the kinds of navigation applications that people may have on their electronic devices are not covered by this bill, I think we can, hopefully, be assured to some degree. Although, in saying that, I oppose this clause because, like other members, I see this as completely unnecessary. Very few people are using these things anyway and there is not really any evidence that they contribute to unsafe driving. We may say that the only reason somebody might have one of these things is to speed, but we do not know that for a fact. That same logic —

Hon Darren West: Why else?

Hon AARON STONEHOUSE: If Hon Darren West wants to say something, he can rise to his feet and contribute to this debate or he can go back to sleep on the back bench.

Several members interjected.

Withdrawal of Remark

The DEPUTY CHAIR (Hon Dr Steve Thomas): Order! Hon Aaron Stonehouse, I will make the first comment that your comments should be directed to the Chair and that all interjections by all members are disorderly and unparliamentary. However, a direct reference to a member not being awake in the chamber is, in my view, a step too far, and I ask you to withdraw that comment.

Hon AARON STONEHOUSE: I withdraw that comment.

The DEPUTY CHAIR: Thank you. Hon Aaron Stonehouse has the call and will be heard in silence.

Committee Resumed

Hon AARON STONEHOUSE: Thank you, Mr Deputy Chair.

The problem with that argument is that it can be applied to navigation equipment—the kind of navigation equipment that Hon Nick Goiran just described. The stock navigation equipment in cars and the GPS applications that people have in their cars or on their phones all come with the ability to tell people where speed cameras are. That feature is not designed to help people avoid being caught speeding; it is merely additional information to improve drivers’ situational awareness. If people are using that information to somehow circumvent the law, that is perhaps a problem, but surely we are not going to apply that argument to ban stock navigation equipment in cars or ban GPS applications. That just does not fly. I really do not think we should take on face value the assertion that people use radar detectors to speed; there is not really any evidence of that. If we start accepting that argument, where will it end?

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Hon Darren West interjected.

The DEPUTY CHAIR: Order! I took some trouble to defend Hon Darren West's position just recently; I expect him to respect that by not throwing disorderly interjections across the chamber. Hon Aaron Stonehouse has the call.

Several members interjected.

The DEPUTY CHAIR: Order! Hon Aaron Stonehouse will be heard in silence.

Several members interjected.

The DEPUTY CHAIR: Order, minister! Order, members! Order!

Hon AARON STONEHOUSE: It has taken me nearly five minutes to make a point that, if uninterrupted, would have taken only two. I do not support the new clause. I think it is unnecessary. I think it sets a rather frustrating precedent to remove tools that drivers use to increase their situational awareness, and it does not, from my observation, seem to be driven by patrol police or cops on the beat—the people out there actually enforcing the road rules. Therefore, I am inclined to oppose this new clause, but I will oppose the regulations in clause 41 as well.

Hon MARTIN ALDRIDGE: I just want to ask a few questions about this new clause. I indicated my concerns in the second reading debate when I canvassed the supplementary notice paper and compared new clause 38A, which we are dealing with now, with clause 41. My concern was about our ability to respond to technological change. Could the minister perhaps provide me with some confidence that new clause 38A will, to some extent, futureproof the government's response to technological change in respect of speed detection devices? To what extent will new clause 38A diminish what would have been available through clause 41?

Hon STEPHEN DAWSON: The regulation-making power in clause 41 is broader and would allow us a bit more latitude. With regard to new clause 38A, provided a device or other equipment is capable of detecting the operation of an average speed detection system, speed measuring and recording equipment, or speed measuring equipment as defined in the acts, we are confident that it will give us a bit of latitude to futureproof the legislation. It is not as broad as clause 41, but it covers a device or other equipment that is capable of detecting the operation of those devices now. If a device comes out in the future that does these things, it will be captured, but at this stage new clause 38A does what we need it to do now.

Hon MARTIN ALDRIDGE: Given that we are the last jurisdiction to make this provision, surely we have had the opportunity to learn from every other jurisdiction how they have done it. Is this provision modelled on and tested by case law in other states and territories in respect of the interpretation of the words? Is it the case in other jurisdictions that these offences are in regulations and not in the legislation? Perhaps the minister could give me some confidence that this provision has been modelled on the experiences of the other states and territories over the last two or three decades in respect of how confident we can be that it will stand up to being tested in Western Australian courts.

Hon STEPHEN DAWSON: I cannot tell the honourable member whether it has been previously tested judicially; I presume it would have been, if it has been in operation in other states and territories for up to 23 years. On the question of whether it appears in regulations or in the act in other states, that varies from state to state. It is in regulations in Queensland. In Tasmania, the Northern Territory, Victoria, South Australia, the Australian Capital Territory and New South Wales, it is in their respective acts. It just depends.

Hon NICK GOIRAN: I take the minister to the plain English reading of proposed section 81G, which is before us. Under the proposed section, "radar detector" means a device or other equipment that is capable of detecting the operation of an average speed detection system. Let us consider for a moment the example I gave the minister earlier. It is quite commonly the case nowadays that cars have a navigation system that would fall within the definition of a "device", within or on the vehicle. I think Hon Martin Aldridge in his contribution to the second reading debate yesterday referred to the fact that we have a situation in which people can touch the screen in their motor vehicle —

Hon Stephen Dawson interjected.

Hon NICK GOIRAN: I do not think it is an offence, minister. It is an offence to touch one's mobile phone, but Hon Martin Aldridge was referring yesterday not to a phone screen, but the screen attached to a vehicle's console. The fact that that device is within or on a vehicle means that it would fall under the definition of proposed section 81G. The question then becomes: is that device capable of detecting the operation of an average speed detection system? I know that from time to time—when the McGowan government has not put in roadblocks and I am allowed to travel around Western Australia—when I have travelled south, there is an average detection system in place between Mandurah and Bunbury. I have travelled through there multiple times, and as I approach that area, my navigation system—it is on, whether I like it or not—tells me that I am approaching this average speed detection system. I know we had a useful dialogue on this earlier by way of interjection, but I would just like some further confidence that

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it is definitely the case that these types of simple devices that people have in their cars will not be captured. They have absolutely nothing to do with trying to be able to speed; they are devices that come with the car.

Hon Stephen Dawson interjected.

Hon NICK GOIRAN: That is what I want confirmation on. As I read the ordinary English language wording before us, it is not clear to me that they would be excluded.

Hon STEPHEN DAWSON: I again confirm that they would be excluded. They are not detection devices. Navigation systems in cars advise of probable locations. They are pre-programmed to suggest where a camera might be. If someone is coming to the corner of Guildford Road and East Parade, for example, the navigation system in their car might alert them to a red-light camera ahead. That is pre-programmed; it does not detect. It is not picking up on the emission—I think that is the right word—from the camera. A radar detector needs to pick up on a signal being emitted; navigation systems in cars do not. They are simply pre-programmed to tell the driver of the likelihood of a camera ahead.

Hon NICK GOIRAN: The key word in the definition is “detecting”. If it stated that it was capable of advising of the probable operation or location, then we would have a problem.

Hon Stephen Dawson: It is detecting the operation.

Hon NICK GOIRAN: Okay.

Hon AARON STONEHOUSE: As I read over this in a little more detail and think about it further, I noticed something that is a little concerning to me. It may be intentional; it may be something that was just overlooked. We are talking about radar detectors. That is defined in the proposed new clause as a device “that is capable of detecting the operation of”, and there are three things listed there: “average speed detection system”, “speed measuring and recording equipment” and “speed measuring equipment”, all of which are defined in the Road Traffic (Administration) Act. The proposed clause points us to several sections of that act for those definitions of speed detection systems, speed measuring and recording equipment and the like. The problem is that I do not see in the Road Traffic (Administration) Act any reference to radar cameras specifically. As I understand it, “average speed detection systems”, “speed measuring and recording equipment” and “speed measuring equipment” as defined in the act could include other kinds of cameras that do not detect speed through radar. They could include infra-red cameras, perhaps, or lidar cameras, or whatever other technology might be used to detect speed. Therefore, my reading of this amendment is that we would not actually be banning radar detectors; we would be banning lidar detectors, infra-red detectors and any device that is capable of detecting the type of emissions or technology that is used to record speed by whatever speed recording cameras may be prescribed or approved by the minister under the Road Traffic (Administration) Act. Is my understanding correct that this proposed new clause would extend beyond radar detectors and would in fact extend to anything that can detect the operation of some kind of speed measuring device, whether it be radar, lidar or infra-red?

Hon MARTIN ALDRIDGE: I will go through a few questions on this clause, but not many.

The DEPUTY CHAIR: On the amendment.

Hon MARTIN ALDRIDGE: Yes, sorry, on the amendment, the new clause. Minister, I refer to the sale and supply of radar detectors. This legislation will obviously create a prohibition only if a vehicle is fitted with a radar detector or has a radar detector within or on the vehicle. Given that, as I understand it, there is no use for these devices other than having them within a motor vehicle, is the state considering restrictions on the sale and supply of radar detectors?

Hon STEPHEN DAWSON: Obviously, the sale and supply of radar detectors are not covered by this bill. The issue is being canvassed by government at the moment.

Hon MARTIN ALDRIDGE: In a similar vein, if we are the last jurisdiction in Australia to prohibit the use of radar detectors, as I understand from the minister’s second reading reply, in which he talked about it being part of the model —

Hon STEPHEN DAWSON: The Australian Road Rules.

Hon MARTIN ALDRIDGE: The Australian Road Rules, that obviously being a decision of the Council of Australian Governments or a similar body, and then the states rush off and implement them as they see fit. Is there some utility now in moving as a nation with respect to seeking the commonwealth to restrict the importation of such devices into Australia?

Hon STEPHEN DAWSON: I did add that it was the Australian Road Rules. Those road rules were made in 1999 and belong to the National Transport Commission. Appropriate ministers from each jurisdiction are members of

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that commission. I am told we are not aware of any consideration at the moment about banning the importation of this material into Australia.

Hon MARTIN ALDRIDGE: I understand it is outside of the scope of this bill, and also the scope of the Minister for Police; Road Safety, who is responsible for this bill. But I ask the government to give consideration to those two issues, because I think simply creating a prohibition is not necessarily going to resolve the issue completely.

The other thing I wanted to ask the minister is the infamous media statement of yesterday's date referred to —

Under the proposed new offence to be introduced into Parliament today, anyone caught driving a vehicle fitted with a radar detector will face a \$3,200 fine.

A second or subsequent offence would attract a fine of \$4,800

That obviously reflects the penalty provisions in proposed subsection (2) of this new clause. My question is: if a police officer does a roadside stop, sees that there is a radar detector fitted and issues an infringement, will the police have power to confiscate that device?

Hon STEPHEN DAWSON: Under the Criminal Investigation Act 2006, police have the power to seize certain items if people do certain things. So, yes, they would have.

Hon MARTIN ALDRIDGE: Police have a power to seize. I suspect the answer to this question is that it will be illegal to have one of these things or use one of these things in a vehicle, but ordinarily it will not be illegal to buy, retain or keep one. It is only illegal if a person has it in their vehicle and wants to use it. If the police confiscate a device, I suspect the confiscation is going to be short-lived, because someone is lawfully able to possess a radar detector and import a radar detector, they are just not allowed to have it in their vehicle.

Hon STEPHEN DAWSON: I am told the legislation says that if a device is in the vehicle—it does not have to be in use at the time—it can be confiscated.

Hon MARTIN ALDRIDGE: That was the last question that I had. I want to indicate that the Nationals WA will be supporting new clause 38A. I suspect that some of those crucial issues need to be considered by the government in due course to make sure that these provisions actually achieve what the government intends them to achieve, and there probably needs to be a more holistic response to some of those matters, rather than just a use offence, which is what we are dealing with at the moment.

I want to respond to a couple of the things that have been said on the sensitivity around this issue of radar detectors. One of them is that people see them as a way to avoid revenue raising or that the issuing of infringements is simply the government raising revenue, and we want to try to avoid that. If that is one's view, the way to deal with that is not to oppose a prohibition on the use of radar detectors; there are other ways to address that concern, if it is indeed true. One way is to have all traffic infringements flow into the road trauma trust account as opposed to just red-light and speed camera infringements. If all road traffic infringements flowed into the road trauma trust account, that would be a fantastic outcome for road trauma and road safety in this state. It would also help quell the accusations that this money is flowing into government coffers and raising more money for government. The other thing that could be done is to increase transparency on the application of the road trauma trust account. This would ensure that every dollar that flows from that important fund is used for road safety and that we keep check on ministers, such as the current minister who decided to buy new police helicopters out of the road trauma trust account with no demonstrable road safety benefit. Those sorts of things would go a long way to address the concerns around revenue raising from offence provisions like this in our state, and more broadly.

The other issue is that some members have argued that there is no evidence that radar detectors have an impact on road safety impact and, therefore, we should not do anything for now until we have some evidence. I look at it a little differently. As one of the two houses of Parliament, we are responsible for the statute book. We make the laws. We expect our law enforcement agencies to enforce the laws. We have laws in this state that say people shall not exceed the posted speed limit. It seems rather bizarre to me that we, as legislators, would then take a position that allows people to continue to lawfully use a device to avoid detection by law enforcement, which simply enforces the laws that we have made or the regulations that we have not disallowed. That seems like a very interesting argument to make. I cannot stand in this place and say that I will oppose a proposed new clause that will hopefully limit the use of devices, the sole purpose of which is to detect law enforcement and the enforcement of posted speed limits in Western Australia.

Hon AARON STONEHOUSE: This is my last question. I did not get an answer to the question I asked earlier: will this radar detector ban in the new proposed clause also apply to devices that might detect laser or infra-red type cameras?

Hon Nick Goiran; Hon Stephen Dawson; Deputy Chair; Hon Aaron Stonehouse; Hon Rick Mazza; Hon Martin Aldridge

Hon STEPHEN DAWSON: If a device or other equipment is capable of detecting the operation of a radar, then the answer is yes. An infra-red camera does the same thing, so the answer is yes. I make the point again: people have these devices in their cars to enable them to speed at other times.

Hon AARON STONEHOUSE: I need the minister to clarify that. Proposed part 5B is titled “Part 5B — Radar detectors”. It then outlines that a radar detector is a device that is capable of detecting the operation of not just radar cameras, but infra-red and laser cameras. This provision’s application is actually much broader than a quick glance at proposed part 5B’s title would imply. We are clear. We support this proposed new clause. People may agree with the policy and the assertions of the minister that it is a good idea to ban devices that may be used to circumvent the law, but we are going beyond radar detectors in this case. By agreeing to this proposed new clause, we are also banning laser and infra-red detectors.

New clause put and passed.

Clauses 39 and 40 put and passed.

Clause 41: Section 111 amended —

Hon RICK MAZZA: We have just passed an amendment at 4/NC38A to insert a new clause that provides for specifically radar detectors. Clause 41 is now redundant. My opposition to this clause from the outset was that it was not within the scope of the title of the bill and it was a very broad regulation-making clause that could capture a host of unintended things. The chamber should now oppose this clause because it is no longer relevant.

Hon STEPHEN DAWSON: The chamber has agreed to insert new clause 38A. The government’s intention was to ban the use of radar detectors and that has been achieved. On that basis, the government will not oppose Hon Rick Mazza’s request.

Clause put and negated.

Clauses 42 to 52 put and passed.

Title put and passed.

Report

Bill reported, with amendments, and, by leave, the report adopted.

As to Third Reading — Standing Orders Suspension — Motion

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [10.18 am] — without notice: I move —

That so much of standing orders be suspended so as to enable the bill to be read a third time forthwith.

HON NICK GOIRAN (South Metropolitan) [10.18 am]: This is becoming customary and, as I indicated last night on another bill, that is fine; it is up to the government if it wants to move these type of motions. But when the government moves a motion to suspend standing orders, it is appropriate for a minister to provide an explanation. No explanation has been provided. The hardworking minister provided me the courtesy of letting me know that the government intended to do this, but no explanation was provided and I think it would be appropriate to have that explanation on the record.

In this instance we are talking about a bill that is about to be passed by the Legislative Council within 24 hours of being brought on for debate for the first time. Within a day, the Legislative Council has done its work. The bill that will be third read, if this motion is agreed to, will have three amendments to the original version. The Council has done its work within the 24 hours, notwithstanding that it took seven months for the bill to come on for debate.

The government may say that it is really keen to get this matter moving. That is not an explanation, because we know that during debate on clause 2 during Committee of the Whole House the government said it would take about two months to deal with any of the provisions, and in other cases it may take six to 12 months. In those circumstances, it is not readily apparent to members why we would be agreeing to the extraordinary measure of suspending standing orders. At this point, before the opposition can determine its position on this matter, we would simply ask the government to provide an explanation as to what is the rationale behind the suspension of standing orders.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [10.21 am] — in reply: I appreciate Hon Nick Goiran’s comments. Of course I am very happy to stand to respond to his comments. I say at the outset that I am very grateful for the collaboration of honourable members in how they have dealt with this bill in this place. We are getting towards the end of a parliamentary sitting period and there are a number of bills the government deems worthy of passing before we rise.

Hon Nick Goiran; Hon Stephen Dawson; Deputy Chair; Hon Aaron Stonehouse; Hon Rick Mazza; Hon Martin Aldridge

In relation to this legislation, Hon Nick Goiran is correct: I did say that my advisers told me it would take about two months for the necessary regulations to be amended and in place for the radar detector elements of the bill to come into operation. If we suspend standing orders today to allow the third reading, it will allow this legislation to go back to the Legislative Assembly today. It will allow for that considerable amount of work to be done over the recess period. In fact, I have an element of confidence that by the time we come back, the majority, if not all, of the work on the regulations and radar detectors will have been done and therefore can become law. We are very keen. Although honourable members pointed out there is no research to show how frequently radar detectors are used, I am advised that the changes in the bill before us, hopefully, will save lives. As Hon Martin Aldridge pointed out in his contribution, every year there are many accidents on the roads in his electorate. Hopefully, as a result of the legislation before us, there will be fewer in the future.

Question put and passed with an absolute majority.

Third Reading

Bill read a third time, on motion by **Hon Stephen Dawson (Minister for Environment)**, and returned to the Assembly with amendments.