

ROAD TRAFFIC AMENDMENT (IMPAIRED DRIVING AND PENALTIES) BILL 2019

Second Reading

Resumed from 26 September.

MR P.A. KATSAMBANIS (Hillarys) [3.44 pm]: I rise as the lead speaker for the opposition on the Road Traffic Amendment (Impaired Driving and Penalties) Bill 2019. As the title of the bill suggests, it deals with driving impairment, particularly impairment through drugs or alcohol, and penalties related thereto, as well as some other minor changes to legislation that I will get to later.

The Liberal Party stands with every other law-abiding citizen in this state, including members of the government, members of the Nationals WA and members of the crossbench in the other place, in condemning people in our society who continue to flout not only the law but also their own safety and that of other road users by driving whilst they are impaired by either drugs or alcohol, or both drugs and alcohol. We welcome any changes to legislation that will make it tougher for those people who drive whilst impaired and that will punish them appropriately if they choose to drive whilst impaired. We do that unashamedly, because we have seen over decades the carnage that drink-driving and drug-driving can cause on our roads—the death and the serious injury that they can cause to the impaired people, their passengers and, more particularly, to other road users such as the people in other cars that they collide with, as well as pedestrians and cyclists. In some cases, we have even seen drivers impaired by drugs or alcohol driving their cars into people's homes and injuring people who are asleep, including babies safely tucked away in their own homes. The carnage is horrific. We see it on our daily news. We have seen the very confronting advertising, yet a small cohort in our community continues simply to believe that the laws of the land and the laws of physics do not apply to them.

Mr R.H. Cook interjected.

Mr P.A. KATSAMBANIS: I note that the Minister for Health has responded to my last comment.

Mr R.H. Cook: They defy the laws of physics!

Mr P.A. KATSAMBANIS: I look at the Minister for Health and the position he holds, and, unfortunately, Ministers for Health and the health system deal with these horrific consequences. They understand that the laws of physics are immutable and if someone runs off the road at great speed whilst impaired by drugs or alcohol, their judgement is impaired, they are going to cause carnage and they are going to end up in our hospitals, in our emergency departments and in our morgues. When I talk about the damage this causes people, we should never forget the damage caused to first responders, whether it be police officers, ambulance officers, tow-truck drivers, people in our hospital emergency departments or perhaps even innocent bystanders who run in as, thankfully, good Samaritans to assist when there is a road traffic incident and injured parties require assistance. We want to minimise and hopefully eliminate this sort of carnage, which is why over many decades now, really since the 1970s when we first started becoming aware of the damage impaired driving can do, we have continued to update our laws to reflect the fact that driving whilst impaired by drugs or alcohol is a serious offence.

It ought to be treated seriously, and those people who continue to do it ought to be appropriately punished.

This bill continues down the pathway that has been established for a long, long time now. The first major change that it deals with is one that could be described as an oversight, a gap or a loophole, but it is potentially a lethal gap or loophole. We know that when we drive down our streets, particularly our main roads and freeways, where there has been a police booze bus operation overnight, we often see a series of parked cars along the side of the road. That usually indicates the police have been successful in detecting drivers impaired by alcohol and that they have issued them with an immediate notice to leave their car and to find an alternative way home. People who are impaired by alcohol should get off our streets immediately. People should not be able to be clocked for driving whilst impaired and then drive off into the sunset to continue to present a risk on our roads.

Unfortunately, that element of our law that applies to drink-driving has not extended to those people who are detected at a roadside test of having the presence of a prescribed illicit drug in their system. Therefore, drug-drivers can theoretically be pulled over to the side of the road, tested by the police, and if the initial test is positive for a prescribed illicit substance, legally, those people can basically give the police their name, address and details and get back behind the wheel of a car and drive off into the sunset, despite having been detected as having illicit drugs in their system and potentially posing a grave risk to themselves and other road users. Anecdotally, I am told that police use a combination of persuasion, silver tongue and perhaps a bit of bluff to persuade those people to leave their car on the side of the road and to come back and get it the next day. But the police have no legal power to direct a person detected on the side of the road as having a prescribed illicit drug in their system to leave their car and find another way to get home. That is a serious risk. Just simply by bringing this bill into the house provides the opportunity for that gap to become better known in the community. Therefore, for that small cohort of hardcore offenders, the real risk is that they will get knowledge of this and choose to thumb their noses at those persuasive

techniques that the police use presently. If a person is detected with a prescribed illicit drug in their system, they should not be allowed to drive off; it is as simple as that. If a person breaches the alcohol laws, they have to leave their car on the side of the road. It should be exactly the same with prescribed illicit drugs. I recognise, of course, that the roadside test for drugs requires a few other steps before things can be proven, and there is always a presumption that the test may not necessarily be 100 per cent accurate. But if there is a risk that we are putting an impaired person back on the road, we should be eliminating that risk. Therefore, we support the provision that is being introduced here.

Our concern is—it is particularly a concern for me—about the length of time it is taking to get to the position of implementing this small but very necessary change in the law. We have tabled the bill and it has sat around for a few months in this place. Hopefully, by the end of this week, it will have got through this place and will go to the Legislative Council. We know that they have a little bit of work over there, but sometime next year, the Legislative Council will get around to looking at this bill and hopefully pass it as well. But in the meantime this loophole continues to exist, especially over the busy Christmas period, which we know is a high-risk period for dangerous incidents to occur on our roads. We know the road toll usually spikes during holiday periods, including the Christmas holiday period. We want to avoid that happening. Governments of all persuasions and well-minded citizens and good corporate citizens engage in campaigns to discourage bad driver behaviour. We know that 99 per cent of people listen to that, but a small cohort does not. I would have thought that this would have been one more weapon police could have had in their armoury coming up to this Christmas holiday period—that is, if they detect a driver who has a prescribed illicit drug in their system, they could at the very least issue them with a notice or a direction to leave their car on the side of the road for 24 hours. That would take just one more risk factor off our roads.

In good faith, when the legislation was tabled and I had an opportunity to look at it, I wrote to the minister and suggested that perhaps, knowing the time frames that we have been working under in the last few months in this place and in the other place, she would consider simply severing these particular provisions and bringing them in in a standalone bill. If she had done that, we could have come in here and I could have got up and said some nice things for five minutes and the minister could have said some nice things and we could have sent it over to the other place. We could have used some powers of persuasion to get its members to find another 10 minutes in their schedule to get it through and we would have got it on the books before Christmas.

Mrs M.H. Roberts: Have they ever dealt with anything in the upper house in 10 minutes?

Mr P.A. KATSAMBANIS: Minister, if we do not dare, we will never find out. I have a saying I used to use a lot when coaching kids footy, which probably harks back to my own footy career and gives an idea of why I did not progress as far as perhaps others thought I would: you miss every shot for goal that you do not take. It is the same here. If we do not take the chance, we are never going to know. We can laugh and scoff —

Mr D.A. Templeman: We are gun-shy.

Mr P.A. KATSAMBANIS: Perhaps it is being gun-shy, Leader of the House. Whatever it is, I did offer that suggestion in good faith. I know the minister did not accept it. I was not trying to be funny or sneaky or tricky; I was just simply saying that we have identified a loophole that should have been closed yesterday, so let us close it. That is all. The minister did not accept that, so I moved on. I do not criticise the minister; I just simply say that sometimes we can get stuck in procedures. I used to be in the other place; nowadays, I do not even want to contemplate what actions they might take, because a little bit of knowledge is a dangerous thing. We are talking about road safety. We are talking about a really important issue in relation to road safety. We are not talking about inching up the penalties or tidying up some of the language; we are talking about a serious road safety issue. I would have thought that if we used our joint powers of persuasion, perhaps, members over there would find half an hour to get something through. That is not going to happen now. It was offered in good faith. I accept that the minister has other reasons for not doing it, so we will keep moving.

However, it is an important change and one that we absolutely and fully support. I wish, and the Liberal Party just wishes, that we could have streamlined the process somehow to make it a reality sooner rather than later, especially, as I point out, as we come up to that really dangerous Christmas holiday period. I do not want to indulge too much in these matters, but I take this opportunity to join the minister, the Premier, the Leader of the Opposition, and everyone in between, in urging the public of Western Australia once more to be extra careful and more vigilant than ever before, with themselves and their own driving habits, their family and friends and their driving habits, and, in particular, to just be more aware on the road because they do not want to become the inadvertent victim if they can avoid it. Unfortunately, as experience tells us, we know that there will be idiots on the roads. We want to minimise the number of idiots until eventually we get to the golden point at which we have zero idiots on the roads. People should be ever-vigilant, especially in these holiday periods.

The next change this bill seeks to make is the introduction of a new offence that targets people who drive with both an illegal level of alcohol and prescribed illicit drugs in their system. We know that is a community problem. We know

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that a number of people use alcohol and drugs in combination with each other. It is a lethal mix—a lethal cocktail. We know the damage that driving while impaired by alcohol can cause on our roads. We know the damage that driving under the influence of illicit drugs can cause on our roads. When you mix the two together, it multiplies the risk by a massive number, so it is a seriously dangerous thing to do. I was told at a briefing the minister's office organised for us that once police find someone who has been drink-driving, they stop there because in most circumstances the penalty that applies for drink-driving is higher than the penalty for drug-driving. I suggest that the Minister for Police could flag that as an area in which more work needs to be done in the future. I do not want to put words in the minister's mouth, but I see her nodding at least semi-approvingly. In today's day and age, that is another area I think we need to tighten up, and tighten up quickly. Currently the penalties for drink-driving are higher and police, knowing that their time is precious—they are run off their feet anyway—stop there and do not bother testing for illicit drugs.

The government is introducing a new offence in this bill that deals with people who have both an illegal level of alcohol and prescribed illicit drugs in their system. It will be a high-level offence to indicate the gravity and seriousness of acting in this way. The opposition obviously supports that provision. As I said, the next step is to get the drug-driving penalties toughened up too.

There is not much more I can say around this offence, other than it is a lethal mix. Excessive levels of alcohol and driving is dangerous. Illicit drugs and driving is dangerous. Mix alcohol and drugs with driving and the potential for damage and harm and carnage on our roads increases exponentially. We want to stop it. If people think they can get away with it, giving them a tough penalty is a good way to go because they do deserve punishment. There is no excuse for not knowing the consequences. Young people today are told about the consequences right through school. They know that well before they go for their driver assessments. They need to read up on all this sort of stuff before they go for their driver assessments, particularly their learner's permit assessment. They know about it, so if later on in life they choose not to listen to it and they are detected, they ought to be punished appropriately. The opposition supports that.

The third element of change this bill introduces is an increase in penalties for drink-driving and drug-driving offences to keep up with inflation in some way and also to ensure that they remain an effective deterrent. I have spoken in this place before about Western Australia not having an effective whole-of-government approach to incrementally increasing prescribed penalties to reflect the time value of money and to keep up with inflation. Often, if we leave penalties on the books for a period, what was a significant financial deterrent 10 or 20 years ago may not necessarily be much of a financial penalty at all and may seem like a slap on the wrist. Being vigilant in increasing penalties is a good thing to ensure that they remain a deterrent. We support that. I note that the increases to the penalties still bring us to around the national average. This is me freelancing a bit, if you like, and expressing my own personal opinion: considering Western Australia's performance in road safety, particularly over the past five years or so in comparison with some of the other states, using even higher penalties as a potential deterrent would probably be a better outcome. I realise that penalties may not be a deterrent for everybody, particularly some of those hardcore idiots I described before who simply do not think that these things apply to them. It may not deter them, but in the main, for the average person, stiff penalties act as a deterrent and financial penalties and licence cancellation penalties also act as a deterrent. I have no problem in saying that the Liberal Party supports the increases that are brought forward by this bill. We would happily consider any other suggestions brought forward in the future.

The fourth element this bill brings before us is a streamlining of some of the enforcement processes around drink-driving and drug-driving, a modernisation of the language and removing some of the obsolete provisions in our Road Traffic Act. Some things have changed and legislation needs to reflect both reality and practice. For instance, references to blood testing will be removed because that is not done routinely for drink-driving anymore. A number of sections have become obsolete through other amendments. For instance, the legislation will delete section 72A of the Road Traffic Act that requires a review of certain provisions that had been introduced by the Road Traffic Amendment (Drugs) Act 2007. The provision is obsolete because the review has already been conducted. The review was tabled in Parliament more than 10 years ago, so that section is obsolete. A series of sections will either be deleted or amended to update them and modernise some of the language as well. The opposition supports that. We do not see it as anything other than good housekeeping. Given that we are introducing some substantive changes to the bill, it is a good opportunity to tidy up the rest at the same time and do the housekeeping I suggested.

That brings me to the last substantive change that this bill will introduce. It is contained in clause 41 and makes a significant change to the regulation-making power in the Road Traffic Act 1974. Keen students of legislation would note that the regulation-making power in the Road Traffic Act is not a standard regulation-making power. It is quite lengthy and prescriptive in many ways. This legislation will introduce a unique new element to it. It will insert a proposed section 111(1)(b) into the Road Traffic Act, which states —

(1) The Governor may make regulations —

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- (b) 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.

That is all well and good. If we look at the explanatory memorandum to find out what the minister and the government intends to do with this, we can read —

Clause 41 implements Reform 5 —

That is, reform 5 of this bill —

by inserting proposed new section 111(1)(b) to confirm that regulations can be made to regulate the use of devices in vehicles in both positive and negative terms.

That does not tell us a lot—“both positive and negative terms”. Does that suggest that it will regulate whether people can or cannot use a device? That is all well and good. We were left to ponder what this really means. It talks about devices. We know that devices are already regulated. The classic device, which becomes a subject of discussion quite regularly at the moment, whether it is at dinner parties, in this place, or in the media, is the humble mobile phone. That is a device and we know that the use of mobile phones in motor vehicles is regulated at the moment. That is right, and we are not criticising it in any way. It is the right thing to do. If people are driving and their mobile phone is at their ear, the police can pull them over and issue them with a notice. I notice a lot nowadays that people have the phone on the steering wheel and seem to be tapping away. I am told that some people have been detected watching movies and all sorts of things on their phones while driving. We are already doing that, so what is this change to the regulation all about? There has not been any impediment to making laws about the use of mobile phones. We delved deeper into it and at that briefing we asked what it was about. We were initially told that it was to futureproof the legislation and that there might be new devices in the future. We do not know what those devices will be or what they will look like. If push comes to shove, we can bring in legislation anytime we want anyway, so why do we need this regulation-making power?

We were eventually told that it was because consideration was being given to banning what are colloquially known as radar detectors, which are used by some people to detect the presence of radars or police enforcement action to get people who are driving above the speed limit. Those devices can currently be used in Western Australia and there is no prohibition against them. Some people choose to use them. I think some truck drivers and others choose to use them. There are as many opinions as there are people as to the relative merits of these devices—whether they are good or not good for road safety. I do not want to get into that debate today and I do not think this is the time to have that debate. This is a debate about an amendment to the Road Traffic Act to deal with drug-drivers and drink-drivers. No mention is made of radar detectors in the bill, the explanatory memorandum or the minister’s second reading speech. There is a debate about whether it is a good thing or not a good thing. Some people say that anything that makes someone slow down is a good thing. Other people say that if people slow down only selectively, they will feel free to speed the rest of the time, and that is a bad thing. As I said, that is a debate for another day. The issue with including this provision in this bill is that it is a classic example of regulation by stealth, by slipping something in that is completely unrelated to the rest of the subject matter or to a general prohibition to regulate devices. As I said, we already regulate the use of lots of devices in cars, including mobile phones. It is not as though there is a paucity of legislation that allows us to deal with those issues.

I am willing to give the minister an opportunity to further delve into this in summing up or later in consideration in detail, but this appears to be an attempt to slip something completely different into an otherwise innocuous and, in many ways, important bill. As I said, the regulation-making power in section 111 of the Road Traffic Act is quite prescriptive. This extra bit did not have a good explanation to start with and the best explanation that we have been able to divine so far is that there is an intention to at least look at banning the use of radar detectors. We seek a better explanation from the minister. Is that the case? Is that what this is intended for? If it is intended that it be included for that purpose, how and why is the government precluded from making regulations or legislation about radar detectors now? Is there any intention to have a public debate on the merits or otherwise of radar detectors before a ban is considered? Why is the government acting so stealthily? If that is not the case at all—if we are mistaken, or the information we received at the briefing is inaccurate or incomplete, or our interpretation of it is inaccurate or incomplete, what is the real rationale behind the inclusion of proposed paragraph (b) in the regulation-making power of section 111(1)? At this stage, as members of the opposition, we look at it and we shake our heads.

I spoke earlier about a little experience I might have had in the other place. The other place takes particular interest in regulation-making powers and whether they are Henry VIII clauses that fall foul of legislative principles. Without delving into the internecine details of Henry VIII clauses, one look at this clause and the explanations around it would suggest that our friends in the other place might pay particular interest to it and whether it is in

fact a Henry VIII clause or otherwise an inappropriate expansion of regulation and regulatory-making power in an area that ought to be reserved for the legislature. I raise this issue and I will raise it again at the consideration in detail stage because, as I said, if the minister wants to get up and say that we need to have a debate in this state about whether radar detectors should be used in the future, I have no issue with that. I personally have no concluded position on it, because it is not an issue that was brought before us in legislation. It is an issue that the Liberal Party does not have a position on, because we believe that in order to come to a position, there needs to be a debate in which we can listen to the relative merits of the arguments. I have no issue with having that debate, but do not bring in a ban by stealth, or do not bring in the power to impose a ban by stealth and then bring in that ban by stealth, because that is not good government, that is not good legislation making and it is certainly not good regulation making. We questioned this. We asked why it is here. We will reserve our judgement and give the minister an opportunity to explain in summing up, and she will perhaps indulge the house for a bit longer than a few moments during the consideration in detail stage on this clause. But, at the moment there is nothing before us to suggest that this addition to the regulation-making power in the legislation is a stealthy way of dealing with an issue that deserves appropriate consideration and public scrutiny. It is not good enough to simply slip it in with a whole series of unrelated clauses and issues—the rest of the bill deals with drivers who are impaired by drugs or alcohol—and go away and let some bureaucrats deal with an issue behind closed doors where the public will not get a say. That is where we have an issue and we would welcome the opportunity to discuss it.

However, we stand with every right-minded and community-spirited Western Australian in dealing with the other provisions and the principles behind those other provisions. We condemn drink-driving and drug-driving. We want police to get drug-drivers off the road once they are detected, and give them an opportunity to go home and get off the drugs before they get behind the wheel of a car again. We are happy to send a message that if someone drives with both illegal amounts of alcohol and prescribed or illicit drugs in their system, that is a very, very serious offence—a dual offence—and they will be appropriately punished for it. We welcome the opportunity to increase penalties so that they become contemporary and continue to act as a deterrent. We welcome the opportunity for some housekeeping along the way to tidy up some of the language and remove the obsolete provisions, and we generally wish this bill a speedy passage through the house. Regarding the issue of banning drug-drivers for 24 hours after they have tested positive to a prescribed or illegal substance, we just wish it could happen now, that it could happen today and that from today forward police could have that power so that they do not have to rely on a bit of bluff, silver tongue, goodwill and commonsense and they have legislative power and protection behind them. Unfortunately, that will not happen.

In closing, I reiterate that we are coming up to a very dangerous period on our roads. I hope every single Western Australian starts thinking about themselves, their family and every other road user, and they make sure that they do not drive when impaired by alcohol or drugs. I also hope that they consider the rest of their driving activity so that they do not drive distracted and do stupid things on the roads. The whole idea is to get through this period like every period, with no deaths and no serious injuries on the road. It might be aspirational, but if we stop aspiring to get there, we will not get there and it will not be good for our community.

MR K.M. O'DONNELL (Kalgoorlie) [4.25 pm]: Greetings, Acting Speaker. I, too, rise to speak on the Road Traffic Amendment (Impaired Driving and Penalties) Bill 2019. I wish to speak as a former police officer and about some of my experiences. I, too, rise to support the bill. The first thing that hit me when I read the explanatory memorandum was the provision to allow a police officer to immediately prohibit a driver who tests positive to the presence of a prescribed or illicit drug from driving for 24 hours. We would have loved to have this in the 1980s, when I first joined the police force. We did not have the ability to prohibit a driver, even for drink-driving. I remember getting to Kalgoorlie–Boulder in the 1980s and driving with a good friend of mine who is now a senior sergeant and has been the officer in charge at many police stations. We would drive around and stop vehicles here and there. Back in those days, all we had was our little bag of crystals; we did not have any drug-testing equipment. I do not think anybody having drugs in their system was ever mentioned back then; it was alcohol only. We would stop the driver and ask them to blow into the bag with the crystals. If it was in the evening, we would then walk around to the front of the police car and stand in front of the headlights. It would be me, my partner and the offender, and we would bend down to hold the bag in front of a headlight to see whether the crystals changed colour. We would tell the offender, “If it changes to green, you’re gone.” We would hold it there, and this is the only time we would ever see an offender get really close to a police officer. The officer would hold it and the offender would look down to see, because they do not want it to turn green. We could see that before the crystals would change. The indication that somebody had alcohol in their breath was all we had to go by. We would then convey that back.

The 1980s was a very different time. I remember going to barbecues whilst I was on duty. We would stop at them when we were in the country and would be offered a beer at the barbecue. I was not a very good drinker and hardly partook in alcohol at all, but it was not uncommon for officers to have a drink on duty when I first joined the police. When we stopped people for driving, sometimes we would stop someone who would be quite civil but we could smell a little bit of alcohol and the crystals only changed a bit. We used to say, “Where do you live? Hop in

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the back of the van and we'll drive you home." One officer even said, "Give me your car keys and pick them up tomorrow." That was her way of trying to do a prohibition notice, and it was very good. Back then you could use your discretion, but that all changed in the 1990s and onwards; there is no discretion anymore. I learnt after attending various drink-driving accidents in which people were killed that you do not give people a chance. If they are drinking and driving, they are gone; there is no, "Oh, we'll give you a second chance". No, I am not for that.

We talk about the counting rules. This is another one that I am very impressed with and thoroughly applaud. Many a time, we would charge a person with a blood alcohol content in excess of .08, and then a month or two later, weeks later or even days later, we would charge them with drink-driving. They have been convicted of the .08 offence. They come to court for the drink-driving offence, and it is regarded as their first offence. Of course, for drink-driving it is their first offence, but they have been driving with alcohol in their system before. It should be a second offence, but back then it was not, so people got away with it. They could have four driving with alcohol offences and have it regarded as only their second offence, so I applaud the court now taking into account the previous conviction against section 64 and sentencing the offender according to the higher prescribed penalties for a second or subsequent offence under section 64AA.

Section 62C is amended under clause 5 by increasing the prescribed penalties for driving instructors who provide driving instruction while having a prescribed illicit drug in their oral fluid or blood. Again, yes, that is a good move. In my time, I stopped cars in which the person in charge of the L-plater learning to drive had been drinking, but back in those days there was no offence for the person teaching a person to drive not being sober. I am very glad that the penalties for this have been increased.

I refer now to section 67AA and the failure to comply offence, which makes it an offence for someone to fail to comply with the requirement to undergo a driver assessment or a requirement under section 66B. My question is about the penalty for that. I think we had a minimum for it of 34 PU. My personal opinion is that if a person who has been drinking or has taken drugs fails to comply, they should have a minimum. It is very hard for a magistrate to then say, "Oh, yeah, all right. You failed to comply. Do I give you a minimum, halfway?" I firmly believe no; hit them with the maximum. If that is the first time—their first drink-driving offence, their first drug-related offence driving a vehicle, their first failure to comply—hit them, at a minimum, with their second offence; even their third, completely and utterly. We do not want people failing to comply with the officer's requirement, whether it is to give a drug sample or to give a breath test. In my time as a breathalyser operator, many people failed to comply: "No, I'm not blowing." They were then charged with driving under the influence—the highest one there is. That is great; that is what should be done. After fingerprinting them, I would ask, as I was about to bail them out, "Why did you not blow into the machine and give a sample of your breath?" Numerous times they would say, "My mates told me that if you've been drinking, the easiest way is just don't blow and you won't go." That was the comment. I tell my family, my friends, anyone, "If ever you get caught, follow the officer's instructions and blow. You never know; you might go low rather than high." Back then, as soon as you failed to blow, you got done for DUI. I would rather have seen a much higher penalty in this legislation for failing to comply. We want to deter people from failing to comply.

I turn now to the ability of police officers to issue a prohibition notice to prevent persons from driving for 24 hours if they are found to have a prescribed illicit drug in their oral fluid. I mentioned earlier how, back in the old days, some officers would hold their keys, while others would drive people home. I applaud this and the 24-hour provision. I have been in situations in which we have arrested someone for drink-driving. The car remained on the side of the road and we placed the offender in the back of the van and drove back to the police station. They underwent the breath test. Back then, as soon they had done the breath test, they were fingerprinted and photographed and then let out on bail. We then sat down and started typing for about half an hour or 45 minutes. After we had finished our paperwork, we would get back in the van and drive out; the next minute we would drive past where the car had been parked, and it would be gone. He had got back in the car and gone again. If he was smart enough, he would probably make it home and be safe, but, no, in this one instance, he continued driving around, so we pulled him over and he was done for a second time on the same night. The chances are that that might not happen with a prohibition notice.

Clause 40 inserts proposed new section 110A, which refers to grievous bodily harm and a second person dying. My question to the minister is: if multiple people die in an incident and the driver is still alive, does that mean only one charge is put up under proposed new section 110A? Under proposed section 67(3), the incident ultimately results in death after the commencement of the proposed new section. The driver may still be prosecuted and convicted under proposed new section 67(3). I dare say that if there were multiple deaths, there would be charges for that, but on this it refers to a second person. I do not know whether that means the death of a second or more persons.

I also have a question about the amendment of section 111; the member for Hillarys asked a question about that as well. I read clause 41, which amends section 111. I am not being rude, but that was completely written by a lawyer; I have no doubt.

Dr A.D. Buti: A lawyer drafting legislation?

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Mr P.C. Tinley: Give it to an artist!

Mr K.M. O'DONNELL: For those who have not read it, it is not that long.

Dr A.D. Buti: Which clause is it?

Mr K.M. O'DONNELL: It is clause 41 on page 63. Proposed section 111(1)(a) states —

- (1) The Governor may make regulations —
 - (a) for any purpose for which regulations are contemplated or required by this Act and may make all such other regulations as may, in the Governor's opinion, be necessary or convenient for giving full effect to the provisions of, and for the due administration of, this Act, for the equipment and use of vehicles and for the regulation of traffic, generally; and
 - (b) 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.

Dr A.D. Buti: That's as clear as mud!

Mr K.M. O'DONNELL: Yes. It just makes it hard. I was thinking along the same lines as the member for Hillarys. Are they thinking about radar detectors? To some people, radar detectors are good; to others, they are bad. There is good and bad. I notice that in the metropolitan area, the media lets people know where the speed cameras are located. In the country, that does not happen; no-one is told where the speed cameras are. I do not know whether that is an imbalance. As a country driver, my personal opinion is that I would rather not know where the speed cameras are, because it makes me think about where they could be and about my driving and my speed. I do not know whether that happens in the metropolitan area, but in the country, drivers will flash their lights to let other drivers know that there is a speed camera.

Mr P.C. Tinley: Isn't that an offence?

Mr K.M. O'DONNELL: When I was a police officer, minister, we used to pull over the car if the driver had flashed their lights. Some officers would even chuck a yellow sticker on the car and say, "You've got faulty lights", and the driver would say, "No, I haven't." However, the police were directed not to do that anymore. A driver who flashes their lights does not know who is coming towards them. I tend to think that some people flash because they do not like authority—they have been done by a speed camera, and they do not want anyone else to be done by it. I also think it is a speed deterrent. I have driven along Great Eastern Highway in the middle of nowhere and I have seen a car coming over the ridge, and from all my years of experience, I know the driver is speeding. If I am in my own personal car, I flash my lights at them—and the next minute I can tell that the car is not going as fast as it was. If I have done my bit in slowing them down for the next 20 or 30 kilometres, I think that is well and good.

I think the jury is out on radar detectors in cars. I notice that speed cameras tend to be in the same spot. I do not know whether camera operators have a favourite spot. The traffic officers in Kalgoorlie–Boulder have their favourite little spots. I do not know whether anyone is old enough to remember, but back in the 1980s, when we drove along the tree-lined streets and headed into Northam, on the left-hand side there would be a traffic copper with his radar gun. Nine times out of 10, they would be in that same spot. In Kalgoorlie–Boulder, the coppers love to stand outside the old Main Roads building in Hannan Street, now the St John's building. They love that one at the bottom of Piccadilly Street. Some people want to have a radar detector so that they will know where the speed cameras are. However, after reading this bill and thinking about it and doing some research, I have no issue. If this says that people cannot use radar detectors, I personally would have no issue with that at all. If this bill will stop people from having radar detectors, that is fine; I will roll with the government on that one.

That is about all from me. Thanks for letting me talk on this one.

Dr A.D. Buti: We're very happy that you did! It was very sensible.

Mr K.M. O'DONNELL: Thank you, member for Armadale.

MS C.M. ROWE (Belmont) [4.43 pm]: I rise to make a contribution to the debate on the Road Traffic Amendment (Impaired Driving and Penalties) Bill 2019. The key functions of the bill are to address drink and drug-driving right across our community in Western Australia. This is a really important bill, given that drink and drug-driving is a key factor in approximately 20 per cent of all fatal crashes—that is one in five fatal crashes—not to mention that it also plays a part in one in 10 serious injury crashes. Let us not forget that these are not just statistics; they reflect the tragedy of lives lost in our community on our roads.

Extract from Hansard

[ASSEMBLY — Tuesday, 26 November 2019]

p9264g-9280a

Mr Peter Katsambanis; Mr Kyran O'Donnell; Ms Cassandra Rowe; Dr Tony Buti; Ms Margaret Quirk; Mr Peter Rundle; Mrs Michelle Roberts

Over recent decades, attitudinal changes have occurred across our community. I personally recall that when I was growing up, every time we turned on the television, we were faced with advertisements that were designed by the government to deter drink-driving. They were, “If you drink and drive, you’re a bloody idiot.” These advertisements were particularly graphic. I think they played a significant role in altering societal views on drink-driving quite significantly. However, it is clear from the incidence of drug and drink-driving in our community that there is still a long way to go. It is a major hazard for other drivers and road users, and has devastating effects for victims and their families. That is why this bill is so critical. I would like to take this opportunity to thank and acknowledge the work of the Minister for Road Safety for continuing to do everything within her capacity to make sure that our roads are safe for all who use them.

The key elements of this bill are, firstly, that it will allow police officers to immediately prevent a driver who tests positive to an illicit drug in a roadside test from driving for the following 24 hours. Drivers are effectively taken off the road straightaway while they are drug affected. That is really important. It seems nonsensical that this does not happen presently. It is a really important change to make sure that drug-affected drivers are removed from the roads immediately. Secondly, it will introduce a new offence that will target people who drive both with a blood alcohol level above the legal limit and while affected by illicit drugs. Importantly, this bill will increase the penalties for existing drink and drug-driving offences to ensure they continue to be relevant and effective in terms of deterring this behaviour going forward. That is certainly the intent of the proposed changes. The bill also seeks to streamline the enforcement processes for such offences.

It is increasingly evident that drug-driving is a major contributing factor in driver impairment. The costs to our community exceed \$460 million every year. There is also the terrible cost of loss of lives and major injuries that results from this stupidity that is continuing to occur. Presently, we have the incredible situation in which a driver identified as drug affected can continue to drive, whereas a driver who is identified as alcohol affected has their keys taken away immediately on the spot. Thankfully, this bill will rectify that by empowering the police to prohibit a drug-affected person from driving for 24 hours. I really welcome that change. Such provisions are already in place in many of the other states. It has been in place in Queensland since 1999. Western Australia and Tasmania are the only two jurisdictions remaining that do not have this type of legislation. I would suggest that that is not in line with community expectations around how police and governments should deal with this type of behaviour. It is simply not sensible.

As many members have mentioned, drugs and alcohol together exponentially impair a person’s ability to drive. This bill introduces a new offence of driving while affected by both alcohol and illicit drugs, known as a “polydrug” offence. The 2013 Wolff report in the United Kingdom, “Driving Under the Influence of Drugs”, found that drivers affected by cannabis were six times more likely to be involved in a crash, but when the use of cannabis was combined with the consumption of alcohol, a crash was 16 times more likely to happen. Furthermore, the European Union’s project on driving under the influence of drugs, alcohol and medicines found that drivers under the influence of both drugs and alcohol are 29 times more likely to be killed and 32 times more likely to be injured in a vehicle crash. The evidence is there that this combination is absolutely diabolical, so it is really important that we address that combination within this bill. A combined offence was recommended in the 2015 report of the Community Development and Justice Standing Committee entitled “Are We There Yet? How WA Police Determines Whether Traffic Law Enforcement Is Effective”. That committee was chaired by the member for Girrawheen. We know that when the opposition was in government, it really took no action on this front. That is a real shame, especially in light of the prevalence of methamphetamine right across our communities, in both metropolitan and regional areas.

The new penalties established by this bill reflect the seriousness of the offences and the seriousness with which this government is tackling these issues to try to make our roads safer. Again, I think these laws will be more in line with what the community expects us to do and what it expects our police to be able to do—that is, to be empowered to make sure that these idiots are off our roads. A polydrug penalty will be 1.5 times the penalty for drink-driving alone. These penalties include minimum periods of disqualification of drivers’ licences and a major increase in the fines. Currently, the maximum fine for a first time offender with a blood alcohol content of .05 is only \$500. The bill will increase that penalty. For example, a driver with a blood alcohol content of .08 or greater will face a maximum fine of \$4 500 and, importantly, lose their licence for at least 30 months. Those who drive while affected by drugs will be fined up to \$7 500 or face 18 months in jail. These penalties show how seriously we take road safety in WA. I really welcome that increase in penalties. I hope it acts as a major deterrent to this reckless behaviour, so that it stops and we do not see any more tragedies.

Further to the increase in fines, there is now a penalty for those who fail to comply with a request to provide a breath or blood sample. As the member for Kalgoorlie said, in the past, people refused to have their blood alcohol content tested through a breath or blood test. That will now be an offence called “failure to comply”, which will hopefully rectify that issue. The effectiveness of this bill in reducing road trauma will be further strengthened by our government’s commitment to increase funding to roadside drug and blood alcohol tests by police. That is really fantastic, because it will help strengthen what this bill can, and hopefully will, do. The bill is obviously designed

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to make our roads safer and road users more accountable for their actions, with the ultimate desire being to deter drink and drug-driving and hopefully save lives. Any law that seeks to reduce the number of deaths on our roads is critically important and, frankly, long overdue. I commend this bill to the house.

DR A.D. BUTI (Armadale) [4.53 pm]: I also rise to contribute to the debate on the Road Traffic Amendment (Impaired Driving and Penalties) Bill 2019. I endorse everything the member for Belmont said in her contribution: this is all about improving safety, trying to reduce injury to drivers and others and trying to reduce the cost to our community. When the minister introduced the bill, she stated in her second reading speech —

Substance-impaired driving is a key road safety concern in Western Australia. Although over several decades, attitudes and behaviours regarding drink-driving have changed for the better, alcohol and drugs still contribute to around one in five fatal crashes, and one in 10 serious injury crashes. The impacts of these crashes are often lifelong on the drivers, other road users, their family and friends, and first responders, as well as financially costing our community over \$460 million annually.

The economic and social effects and the effect on families when people die or are seriously injured are, of course, enormous, especially when these could have been prevented by people not being under the influence of alcohol or drugs. As a government, a Parliament and a community, we should seek to do whatever we can to try to decrease the use of substances, whatever they may be, that impair, inhibit or diminish road performance so that we can try to reduce the consequences, which are fatalities and injuries from major crashes. Further along in the minister's second reading speech, she stated —

Currently, Western Australia and Tasmania are the only Australian jurisdictions where a driver testing positive to a roadside drug test may continue driving. Other jurisdictions, some for many years, have equipped their police with the power to immediately prohibit a driver who tests positive from driving off. It was introduced, for example, in Queensland in 1999, in New South Wales and South Australia in 2006, and in Victoria in 2007.

This bill is long overdue. The bill introduced to the house by the minister is, from my understanding, supported by the other side. We really need to move this along. As the member for Belmont did in her contribution to this debate and the minister did in her second reading speech, I will refer to the 2015 report of the Community Development and Justice Standing Committee.

Ms M.M. Quirk interjected.

Dr A.D. BUTI: The committee was chaired by the member for Girrawheen and I was a member. Does the member for Girrawheen not think it was a great committee? We did some fantastic work during those four years. I refer to the report entitled "Are We There Yet? How WA Police Determines Whether Traffic Law Enforcement Is Effective". It does not matter how long we have been in Western Australia or whatever age we are, we have always been aware of campaigns that have sought to persuade people not to drink and drive or to consume substances that may impair or result in a deterioration of their driver performance. There were strong campaigns when the member for Kalgoorlie and I were teenagers. I cannot remember the year in which random breath testing began.

Mrs M.H. Roberts: It was in the 1980s. I think it was about 1984.

Dr A.D. BUTI: Yes; it was definitely after I started driving.

Ms M.M. Quirk interjected.

Dr A.D. BUTI: It is interesting that the member for Girrawheen mentioned that. I was actually a very good boy. I did not like alcohol when I was 17 and 18. Being of Italian background, my father would serve up some marsala—I think it is called marsala.

Mrs M.H. Roberts: Grappa? Vino?

Dr A.D. BUTI: No; my dad made his own vino, which was very rough. It was marsala. Marsala is a drink. I think my mum used to put it in trifle.

Mrs M.H. Roberts: It's a sweet wine.

Dr A.D. BUTI: Yes, it is a sweet wine. I would have a bit when I was 10. I remember going to restaurants at the age of 14 or 15 and having an alcoholic snowball, which is like an alcoholic milkshake.

Mrs M.H. Roberts: Marsala is good in zabaglione.

Dr A.D. BUTI: Very impressive! It never appealed to me to drink a lot, because alcohol was just around the house. When I was 17 and 18 and started driving and going out with my friends, I was always the skipper, because I did not drink back then. I have developed a much greater appreciation for alcohol since I have matured, but of course I am very careful not to consume alcohol to excess and drive.

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There is no doubt that RBTs have been a major deterrent. When I was aged 17 or 18 years, there were not random breath tests and people, unfortunately, got behind the wheel when they definitely should not have got behind the wheel. In the area that I lived and still live—I grew up in the Kelmscott–Armadale region—there were a number of deaths. They were not necessarily alcohol related, but they may have been; speed was involved. The deaths were on Brookton Highway in the member for Darling Range's electorate; only little bits are in my electorate. Within the two years after I left Kelmscott Senior High School, between seven and nine people whom I went to school with, or who left school within the two years after me, died along that stretch of road from Kelmscott to Karragullen. Obviously, safety on the road has been drilled into all of us, but, unfortunately, some people do not get the message. They did not get the message back then and they do not get the message now. Now we have the additional issue of the increased prevalence of drugs being utilised when people are also driving. This bill is very timely, very important and also takes up, as I said, the recommendations in the 2015 report of the Community Development and Justice Standing Committee.

I want to refer to a study in the European Union called “Driving Under the Influence of Drugs, Alcohol and Medicines in Europe—Findings from the DRUID Project”. It is a very interesting report. The summary of that report states —

Roadside surveys conducted in 13 countries across Europe, in which blood or oral fluid samples from 50 000 drivers were analysed, revealed that alcohol was present in 3.48 %, illicit drugs in 1.90 %, medicines in 1.36 %, combinations of drugs or medicines in 0.39 % and alcohol combined with drugs or medicines in 0.37 %.

Although that does not seem like a large number statistically, it is too many. One is too many. Any number can obviously have a very negative effect. The report also states —

Most of the seriously injured or killed drivers who tested positive for alcohol were severely intoxicated. However, results of interviews in two countries showed that problem drinkers do not believe that alcohol impairs their driving. Intensive drug users were more likely than moderate drug users to drive under the influence, with the latter taking a more responsible approach to driving under the influence of drugs.

Moderate drug users were less likely to drive under the influence of drugs while intensive drug users were more likely to drive under the influence of drugs. Of course, that has a double whammy, because an intensive drug user will consume drugs on a more frequent basis than moderate drug users and is not as inhibited or hesitant about driving, so the dangers obviously are escalated. The report further states that although experimental studies did not show that some drugs had a negative influence on fitness to drive, those who were killed in accidents had considerably higher median drug levels for stimulants. Even though experimental studies seem to suggest that it did not impair someone's fitness to drive, the reality was that those who were killed in accidents had higher median levels of drug use for stimulants and this may have a detrimental effect on self-perception, critical judgement and risk taking, which I think seems to be quite reasonable. Further, the report states —

To combat drug-driving, most countries either operate a zero tolerance policy or take into account degree of impairment, sometimes in a two-tier system.

It refers to certain legal limits. Many European countries have sought to combat drug-driving. As I mentioned, the Community Development and Justice Standing Committee of the thirty-ninth Parliament in 2015 released its report titled “Are We There Yet? How WA Police Determines Whether Traffic Law Enforcement Is Effective”. We had many good reports and that is one of them. The history of that committee in the previous Parliament was very interesting, was it not, member for Girrawheen? It was such a great committee doing a lot of very good work that some opposition members felt that they could not remain on that committee. The committee had five members when this report was handed down. They were the member for Girrawheen, the member for Armadale, the former member for Balcatta, the current member for Vasse, and the now Minister for Sport and Recreation, the birthday boy, the member for Collie–Preston.

Page 61 of the report looks at the issue of the number of drug-driving tests that are performed, from which the committee made some recommendations. We made three recommendations as a result of our finding on the number of drug-driving tests performed. Recommendation 6 was —

That WA Police performs at least 90,000 roadside drug tests per year, as per the expert advice provided in 2012.

Recommendation 7 was —

That more drivers who test positive for alcohol are also tested for drugs.

Recommendation 8 was —

That the Minister for Police introduces amendments to the Road Traffic Act (1974) to:

- establish an offence for the combined use of alcohol and illicit drugs; and

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- provide for drug driving to attract the same penalty as drink driving

The Minister for Police believes in actions, and she has taken this issue very seriously. The fruits of that effort are before us in the Road Traffic Amendment (Impaired Driving and Penalties) Bill 2019. As the member for Belmont mentioned, it is quite absurd that at the moment the police's hands can be tied behind their backs; when someone has drugs in their body that is not alcohol, they may still be able to drive. The idea of this legislation is to give the police the ability to prohibit the driver from driving for 24 hours. That is a separate situation. It also provides for people to be charged with drug-driving. We are not saying that if someone has drugs in their body, they cannot also be vulnerable to charges being laid for drug-driving. It is to try to immediately prevent that dangerous situation of a person who is under the influence of drugs being able to continue to drive. I am sure that we can see the absurdity of that situation, and that is why it is important that this bill has been brought before the house.

This bill also introduces new offences for driving after having consumed alcohol and drugs, known as a polydrug offences. As the minister said in her speech —

Research has shown that the use of alcohol and illicit drugs together often results in exponentially increased levels of driving impairment. One research project found, for example, that drivers who took both alcohol and psychoactive drugs were 20 times more likely to be seriously injured or killed in a road incident than an unimpaired driver.

Of course, that also makes sense.

[Member's time extended.]

Dr A.D. BUTI: The Community Development and Justice Standing Committee report of 2015 "Are we there yet?" stated that the Australian Crime Commission has said that illicit drugs provided the greatest threat to the Australian public. Of course, that is in many different respects. It is one of the greatest threats on the road. People who drive under the influence of drugs pose a threat to not only themselves, but also all other road users, whether they are other drivers, cyclists or pedestrians. Further along, the report states —

Researcher Professor Cameron spoke of an "escalation in drug-driving" in all Australian states and ORS executive director Iain Cameron —

I assume that Iain Cameron is no relation to Professor Cameron; or not that I know of —

acknowledged that there was increasing evidence that it was a problem in WA. He suggested that a "change in tactics" may be warranted, since the emphasis thus far had been on drink driving.

Obviously, that is true; there has to be a change in tactics and that is what the minister has done by bringing this bill before the house.

Members should remember that this report came down in 2015. I must say to the member for Girrawheen, who was chair of the committee, it was strange that the previous government did not act on this. The statistical evidence was quite clear; the estimates were telling us things had to change. We made some very pertinent recommendations based on our findings and investigations.

Mrs M.H. Roberts: It was actually an excellent and bipartisan report, "Are we there yet?", and it really was a blueprint for a range of improvements to be made in road safety that would clearly save lives and reduce serious injuries on the road. It is almost scandalous that we have had this delay because the previous government did not act on that report.

Dr A.D. BUTI: The minister is 100 per cent right. I must say it was a frustration to all committee members on both sides of the chamber that the government of the day did not positively respond to the report.

I assume, if the member for Girrawheen makes a contribution, that she will refer to this outstanding report, but her humility and modesty may not allow her to read out the chair's foreword. I think it is very important. We are looking back at 2015, and I would like to spend the rest of my time reading from the chair's foreword. I am now the chair of a committee and I try to model my forewords on the member for Girrawheen's forewords. I have not succeeded. I think I might be getting better but I am not at that level. I need to read this chair's foreword. It starts off with a quote from Bill Gates, which states —

In business, the idea of measuring what you are doing, picking the measurements that count like customer satisfaction and performance ... you thrive on that.

Now I move onto the chair's foreword —

EVERY week we hear tragic news of another life lost on our roads or a family's future forever altered by involvement in a vehicle crash. Western Australia's road fatality toll last year —

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That would have been 2014 —

was the worst in four years, and critical injuries rose even more severely with 106 more than in 2013. The rate of deaths on WA roads—7.2 per 100,000 people—is much higher than the national average of 4.9.

It was in the wake of these disastrous figures that the Committee decided to focus on road policing as the first in a series of reports on the way WA Police evaluates its performance.

At the end of such a year—or even at the end of what the media terms a “horror weekend” on the roads—many are left scratching their heads, including the police. What can be done to bring down the toll?

Making our roads safer involves input from a number of different agencies. It is an extremely complex and sometimes perplexing problem influenced by factors such as road engineering, vehicle design and education strategies.

Hence, WA Police is not the only agency responsible for the road toll. However, it is a key player. Police are given responsibility for enforcing road user behaviour by apprehending those breaking the law and deterring others from engaging in dangerous behaviour.

Deterrence is an important outcome of enforcement. If police are able to create the perception among drivers that they are at risk of being caught for speeding, drink driving or using a mobile device, for example, anywhere and at any time, then they have been successful in applying the theory of general deterrence.

But how do they measure success? WA Police needs to know whether what it is doing is effective. This is not only important from an accountability perspective, but also in the context of recently implemented reforms to the policing model.

I will not dwell on the former policing model; we know that was a disaster.

Mrs M.H. Roberts: Feel free to, if you like.

Dr A.D. BUTI: I do not want to upset the flow of this outstanding chair’s foreword. It continues —

Quite rightly, police services consume a significant portion of the State budget and the public needs to be assured that its tax dollars are being well spent.

Throughout the course of this inquiry we have heard that accessing data which would demonstrate police performance on road safety is difficult. Hence, it is not easy for interested parties and the public to determine whether WA Police strategies are working.

Do the police themselves know whether they are working? When faced with competing arguments about the importance of police visibility and what time of the day to conduct RBTs, for example, are they able to produce evidence that favours one strategy over another?

These measurements are not just required from an accountability perspective but also assist road trauma research and stimulate informed debate amongst members of the community. The latter is vital in changing driving culture which is a notoriously difficult outcome to achieve.

Moreover in the context of financial assessments made on the deployment of personnel in a particular role (a cornerstone of the WA Police’s Frontline 2020), useful performance and meaningful measurement of outcomes can lead to greater efficiencies without sacrificing service levels.

Since the focus of the inquiry was an examination of performance measures, consideration of appropriate levels of sworn officer staffing was not canvassed in detail. However, implicit in WA Police’s deterrence approach is the need to maintain existing levels of police staff. There was evidence before the Committee that traffic police were not deployed one hundred per cent of the time on traffic duties, that RBT teams had been stood down for periods of days to assist on general matters and the number of infringements issued personally by officers on the road has inexplicably dropped.

Reducing the road toll using strategies of general deterrence requires long term strategic planning, application of scientific evidence and significant resources. It is not easy. But I cannot imagine anyone opposing measures which would result in fewer lives being lost on our roads.

Our impression is that traffic police use evidence and intelligence well in the day-to-day operational activities—the type that apply to specific deterrence. Where WA Police seems to be lacking is in the collection and use of evidence to construct the big picture strategies that might in fact create the perception that drivers breaking the law could be caught anywhere at any time.

It was somewhat surprising to realise in the course of the inquiry that the issues we were investigating were novel or had not been widely canvassed elsewhere. It may well be that this report might stimulate

and inspire further research to be conducted such as that recently commissioned by WA Police to be undertaken by the Curtin–Monash Accident Research Centre.

Apart from some thank-yous at the end, that was the chair's foreword.

That told us that the gathering of evidence is very important. But what is also important is that when the evidence is in front of a committee inquiry, whether it is statistical evidence, other empirical evidence or just expert opinions, it is up to governments to respond to that. Unfortunately, the previous government did not respond to that in respect to the issue in this bill.

The Minister for Road Safety has responded to cries to try to work through the ambiguity and the fact that the hands of police are tied in what they can do at the time they find a driver under the influence of other drugs—not only the influence of alcohol. A new offence will be introduced when there is a combination of alcohol and drugs, which is a lethal cocktail. The minister should be applauded for introducing the bill before the house. It brings Western Australia into the twenty-first century in relation to other jurisdictions. Western Australia and Tasmania are the only jurisdictions where drivers are able to continue driving when they return a positive roadside drug test. That is an appalling situation. The sooner this bill passes both houses and becomes law in Western Australia, the better. I strongly commend this bill to the house. I applaud the Minister for Road Safety for bringing this bill before the house. I also applaud the work of the former Chair of the Community Development and Justice Standing Committee for handing down that report. I am assured, without putting words into the minister's mouth, that the former chair's advocacy of that report has been a great motivation for the minister to bring this bill before the house. Hopefully, this is another measure for the police and the community to try to reduce the unsafe situation on the roads caused by people driving under the influence of alcohol and drugs.

MS M.M. QUIRK (Girrawheen) [5.20 pm]: I am somewhat embarrassed after that fulsome praise from the member for Armadale. He is being very modest himself, because he was a contributing member of the committee. The Road Traffic Amendment (Impaired Driving and Penalties) Bill 2019 demonstrates something that newer members might not appreciate. If we are members of this place for long enough, recommendations of committees in which we participate may well translate into legislation. I am gratified that the minister has taken on board the recommendations of the Community Development and Justice Standing Committee, and moved road safety sanctions along, which is incredibly important. Normally, one participates in a committee, and its recommendations go into the ether. They might get a bit of publicity for a day or so, if we are lucky, but the broader issues that are looked at in great detail tend to get stuck in an in-tray, and it is not uncommon for governments of both persuasions to ignore the recommendations for longer than the prescribed period.

The eighth report of the Community Development and Justice Standing Committee in the thirty-ninth Parliament, "Are we there yet? How WA Police determines whether traffic law enforcement is effective", was important because we are talking about key performance indicators, and how the police measure what works and what does not work, and where, for example, they should deploy random breath testing or other road safety sanctions. It became apparent from that report that there was not a lot of science in it. If that was the case, how could we get better outcomes; and what identified problems could be better addressed? There were a number of recommendations along those lines. The report has been referred to in great detail, so I will not spend a lot of time on it, but I want to refer to a couple of the findings and recommendations. Finding 11 stated —

The number of drug-driving tests currently being performed by WA Police is lower than in other States and significantly less than recommended in drug-driving studies.

Recommendation 6 was —

That WA Police performs at least 90,000 roadside drug tests per year, as per the expert advice provided in 2012.

It was also recommended that more drivers who tested positive for alcohol should also be tested for drugs. Recommendation 8 was —

That the Minister for Police introduces amendments to the *Road Traffic Act (1974)* to:

- establish an offence for the combined use of alcohol and illicit drugs; and
- provide for drug driving to attract the same penalty as drink driving.

That is really the substance of the bill before the house today. As the member for Armadale said, policing should be evidence-based, and I believe that, in some respects, that evidence is either not sought or not properly interpreted, or we rely on anecdotal evidence. An example of that is mentioned in the standing committee's report. We recommended that it be permitted that blood samples be taken from road trauma patients. It was not possible to do that at the time, although subsequent legislation has brought that in. The reason for that was that there was lots of anecdotal evidence, mainly from the hotel lobbyists, that alcohol was not the problem—it was solely

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methamphetamine. As we know now, it is usually a combination of those things, but we needed the certainty of evidence, by permitting doctors to take blood samples from road trauma patients, when strictly speaking they could not do so under the ethical rules, because they were limited to treating patients rather than gathering evidence. It is an example of how we can now, with some level of certainty, identify the causal factors in drug and drink-driving: is it a combination of both, what is most prevalent and so on? Police can then target their strategies around that particular evidence.

The other thing about road safety is that it is a movable feast. We cannot just sit here and do what we have always done. The road toll is way too high; one victim is too many. We need to constantly evaluate, just as we have evaluated other measures. There is now a culture in the community at last that drink-driving and drug-driving are unacceptable, but we cannot rest on our laurels. We must constantly evaluate whether measures work. This measure is no exception. Some formal evaluation of the measures we are introducing with this legislation should be done at some stage.

To go back to the question of the community, the Community Development and Justice Standing Committee also looked at the community attitude surveys that used to be conducted. They were very helpful, because they would include responses from the community, such as, "I don't anticipate that I would be tested in the suburbs on a Tuesday night." The "anywhere, anytime" message was significant diluted by the fact that people did not really believe that they could be tested anywhere and at any time. As I understand it—the minister might be able to correct me—these surveys are no longer undertaken, but I think they were very valuable. I know they were expensive, but it seems to me that we need to constantly assess community attitudes, and what particular myths exist about whether someone expects to be randomly breath-tested, so that the police have the tools to better harness their resources to create a real deterrent to driving either drunk or under the influence of drugs.

I have three final issues that I want to raise. The first relates to a visit I undertook to Rapid City, South Dakota, of all places. I went there some years ago to look at the 24/7 Sobriety Program that has been copied in many jurisdictions since. I observed that in place. I mention this because of the sanctions that we currently place on drivers. So many jobs are currently reliant upon people having a driver's licence that a novel approach was adopted to ensure that people stayed in the community. The 24/7 Sobriety Program is a court-based management program originally designed for repeat drink-driving offenders. It was first rolled out in South Dakota. Under the program, the standard of no use of alcohol or illegal drugs was a condition of continuing to drive and remain in the community, rather than being incarcerated. The standard was enforced through intensive monitoring by law enforcement agencies with alcohol and drug testing mandated for each participant. Violation of program rules leads to immediate and brief incarceration of the offender. The culmination of strict monitoring and a no-use standard with swift, certain and meaningful, but usually not severe, consequences has been found to be extremely successful.

The program has been studied, researched and evaluated many times over, but, certainly, the outcomes and aims of the sobriety project were to reduce recidivism, improve public safety and serve as an alternative to incarceration, which, of course, is financially beneficial to the state. That allows offenders to remain in the community with their family and friends, permits offenders to remain in employment and saves tax dollars because most monitoring costs are paid by the offenders themselves and the offenders are diverted from jail where appropriate. It also had a collateral effect on family violence offences.

The ACTING SPEAKER (Mr I.C. Blayney): I am curious to know whether your committee recommended that that be trialled in Western Australia.

Ms M.M. QUIRK: No. In fact, we did not actually look at it, but I went solo to South Dakota and had a look at it. I took a day off to go down to Mount Rushmore to see the bison. I had a look at the program and sat in for a couple of days seeing it being enforced. If the drivers test positive, they are immediately taken into custody and immediately brought before court and judges typically give them escalating jail terms. First violation typically results in incarceration of one or more nights. Repeat violations of the no-use standard or missing test appointments led to increased periods of incarceration and the revocation of any pre-trial release. However, the important and key element here is that all sanctioning is swift and certain. I think one fellow failed while I was present and the sheriffs were called in and the person was literally hauled away to appear before a judge. The results were really impressive and for that reason it has been introduced in many states of the United States of America. The summary report of the 24/7 Sobriety Project states —

At the time the program was introduced, South Dakota had one of the highest rates of adults ... who reported driving under the influence of alcohol in the nation. ... nearly three-fourths of those involved in fatal crashes ... had a blood alcohol level of 0.15 or higher. The number of people killed in alcohol-impaired crashes in the state has declined steadily.

It goes on to state that from 2006 to 2007, alcohol-impaired traffic deaths in South Dakota declined by an impressive 33 per cent.

Extract from Hansard

[ASSEMBLY — Tuesday, 26 November 2019]

p9264g-9280a

Mr Peter Katsambanis; Mr Kyran O'Donnell; Ms Cassandra Rowe; Dr Tony Buti; Ms Margaret Quirk; Mr Peter Rundle; Mrs Michelle Roberts

People on the program would have to report twice a day—on the way to work and on the way home. Technologies such as a bracelet record alcohol through the sweat glands. A person may not have needed to attend but if the alcohol is detected through the wristband—I think Lindsay Lohan had one of these at one stage—they are called in and sanctioned for having drunk when they have committed not to drink. As I said, not only were the results impressive in relation to alcohol and drug use, but also certainly domestic violence, civil abuse and neglect cases were similarly very much reduced.

The program has been evaluated by think tank Rand Corporation, which does a lot of work in the area of law enforcement and describes the program as having three major components: the ability to order an individual to abstain from alcohol; frequent alcohol testing; and swift, certain and very modest sanctions for a violation. Rand states —

When the program was first piloted in South Dakota ... those who were arrested for repeat drunk driving had to abstain from alcohol and participate as a condition of bond. Participants would go to the sheriff's office twice a day—every day—and blow into a breathalyzer. To rule out false positives, those testing positive for any amount of alcohol had to retest in approximately 15 minutes. If they failed the retest, they were immediately taken to jail, where they would stay for a night or two.

This was very different from the typical practice of ordering individuals to abstain from alcohol but testing irregularly, if at all. 24/7 Sobriety appeared to be creating a credible deterrent threat and holding participants accountable for their behavior while they remained in the community.

Rand concludes as follows —

... the 24/7 program is very promising because of its consistent and immediate consequences. Having those in place appears to be a real deterrent to drinking. When integrated into an area's existing justice system and carried out with fidelity, 24/7 Sobriety can reduce alcohol-involved crimes (such as drunk driving) and improve public health and safety.

I raise this program, firstly, because I had the privilege of seeing it in operation. Secondly, the results were quite impressive and I think it illustrates that we need to think a bit laterally in these cases. Doing the same thing over and over again will not produce different and improved outcomes. Having said that, as I said previously, good evaluation needs to occur. It is all very well having peak programs, but if we do not evaluate them and find on the evidence that they are working, maybe we need to revisit them. When we are trying to keep families together, trying to decrease domestic family violence and trying to make sure people retain their jobs—of course, having employment greatly minimises the risk of recidivism—I think the 24/7 program is an excellent one.

[Member's time extended.]

Ms M.M. QUIRK: There are two issues that I think are difficult for authorities to address—that is, the absolutely intransigent alcoholics and drug users who refuse sanction after sanction and cancellation of licence, time and again. However, they are a very small core of the offending population, so it is very difficult for anything to work for those individuals. Maybe in years to come, technology will be available. Yes, we have interlocking devices, but their operation requires something on the part of the driver and, frankly, the really hard cases will just get in another vehicle, but technology is helping. When I was on that same visit in the United States, both Volvo and, I think, General Motors had funding to develop a car that does not require a driver to blow into an interlock. Somehow, the technology is such that the car can sense that the driver has consumed excess alcohol and will not start. It was said at the time that it would be only a few years certainly before Volvo develops its car and General Motors is not far behind. It is another issue in that we need to be mindful that technology can solve some of these less-than-easy-to-solve problems.

The final issue I want to briefly talk about in the discussion of drug-driving is the fact that we have an ageing population. Many of our older Western Australians are on prescription drugs, and some of them mix them inappropriately with inevitable unfavourable consequences. It is not necessarily appropriate to punish people who are taking prescription drugs—of course, the legislation talks about illicit drugs—but the impact of inappropriately mixing drugs can be just as serious. If there is a little money in the road trauma trust fund, it might be worth doing some targeted education programs for our seniors to make sure they are taking their drugs as prescribed and not in lethal combinations or combinations that impair their driving.

With those remarks, I thank the Minister for Road Safety and the members for Belmont and Armadale for their very generous remarks. I do not want to delay the introduction and passing of the Road Traffic Amendment (Impaired Driving and Penalties) Bill 2019 any longer than necessary; I think more than four years is long enough. I thank the minister for implementing the recommendations.

MR P.J. RUNDLE (Roe) [5.40 pm]: I rise to also support the Road Traffic Amendment (Impaired Driving and Penalties) Bill 2019. The Nationals WA will support this legislation. This is quite important legislation and, as others have commented, it has been a while coming. This will be only a brief contribution, but I would firstly like to put

out some statistics that relate to regional areas. As members know, regional communities seem to be the hardest hit by road deaths. Between 2008 and 2017, 25 340 people were killed or seriously injured in Western Australia. That is quite concerning, but regional communities were the hardest hit. The number of road deaths per 100 000 people in the Western Australian regions was 18.7, compared with 6.1 in Western Australia as a whole. That means that people in the regions are three times more likely to be killed or seriously injured on the road. That is obviously a real concern for all of us.

I have some more stats that I found very interesting. In the regions, 55.4 per cent of those killed or seriously injured were male, and 26.5 per cent were aged between 20 and 29 years. The behaviour statistics show that 8.2 per cent were not wearing seatbelts; speed was a factor in 15.8 per cent of cases; and 8.8 per cent of drivers or riders had a blood alcohol concentration of .05 or higher. I think that adds to the arguments for this legislation. I will cite some further drink-driving statistics from 2018, if I may. In 19 per cent of fatalities, alcohol was a factor, and 63 per cent of alcohol-related fatalities in 2018 occurred in regional Western Australia. That is of real concern, as is the fact that 22 per cent of fatalities tested positive to one or more illicit substances. That really adds to the combination, I guess one could say, of drinking and drugs.

WA today reported on 11 April 2018 that more than 250 people per month were being charged with drug-driving on WA roads. Figures released by the Western Australia Police Force in response to questions asked by the opposition showed that between 1 July 2017 and the end of January 2018, 1 760 people were charged with drug-driving offences in Western Australia. In the same seven-month period, a further 3 239 people were charged with drink-driving in the metropolitan area, while 1 945 people were charged with drink-driving in regional Western Australia. To me, that summarises my concerns about drink-driving, drug-driving and the combination of the two.

We need to use this legislation to give more freedom to the police. When I first read the bill, I actually found it quite hard to believe that the police did not have the power to prohibit from driving for 24 hours a driver who has tested positive on the roadside to the presence of illicit drugs. I admit that I have learnt something there, because I just assumed that that would be automatic—that people in those circumstances could just kiss their car goodbye, park it on the side of the road and that would be the end of it; they certainly would not be able to go back to it, but as it stands at the moment, that is not the case. As has been pointed out, Tasmania is currently the only other state where people can do that.

The legislation also introduces new offences to target people who drive with an illegal level of alcohol and prescribed illicit drugs. At the moment, Victoria is the only other state that has such offences. It will also increase penalties for existing drink and drug-driving offences. That all comes into line quite well. The legislation also enhances and streamlines drink and drug-driving enforcement processes. At the moment, police have the ability to only test once; the legislation will introduce the ability to test again, and I think it goes without saying that that will be an important element of the legislation.

The member for Hillarys talked about regulations and ensuring future safety reforms to address new technological changes—for instance, instruments that do not actually exist yet. That was quite an interesting point. I do not know how we can actually legislate for something that does not exist, but I am sure the member for Hillarys will be asking questions about that during consideration in detail. I understand that technology obviously changes and improves all the time. With the different drugs that are going around, there will be a need for improved technologies as we go along. That will be an interesting element of consideration in detail that I will be keeping an eye on.

I think the Minister for Road Safety is on the right track with convictions for a second or subsequent offence—to have the ability to go back to the original offence and take it to the previous level under the counting rules, as they are described. I think that is fair enough, because if the initial offence is at a higher level, I do not see any reason why we should not be able to go back to it. That is covered under clause 64. I also note that the WA Police Union has advised that it is supportive of the bill, as I would imagine it would be.

I have highlighted a couple of things in the minister's second reading speech. I agree with the minister that this bill will send a message to drivers who are under the influence of alcohol and drugs that there is no place for them on our roads. When I look at some of the things that happen in regional areas, for that part of the population that seems to like to mix both elements—alcohol and drugs—that is not on. We have seen some examples of that. The one that sticks in my memory is the person who was affected by methamphetamine and was driving from Bunbury to Perth on Forrest Highway and weaving all over the road. There is heaps of dash cam footage of how the driver was almost deliberately attempting to run other drivers off the road. In the end, unfortunately, a vehicle that was coming in the opposite direction was run off the road, and the passenger lost their life. That is the sort of instance in which this legislation will come to the fore. It will certainly contribute to road safety by giving the police the opportunity to implement measures that will get these drivers off the roads. I note the minister's comment that people who mix illicit drugs and alcohol are 20 times more likely to be seriously injured or killed in a road incident. That really sums it up. The bill also provides for drivers to submit to drug testing in line with current drink-driving enforcement powers, and removes references to obsolete equipment and processes such as urine sampling. That is

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obviously to keep up with modern technology; however, as has been pointed out, there is a bit of a concern that some of the technology has yet to be invented.

From my perspective, I worry about all our road users. The statistics bear out that, hopefully, this bill will be very effective in reducing drink and drug-driving. The wastewater methamphetamine statistics that came out recently for places like Bunbury show that meth use is increasing. There have been discussions in Parliament about the effectiveness of government action in curbing the use of meth and other drugs. This is a good piece of legislation, because it will act as a deterrent. I worry about road users on both metropolitan and regional roads. As I pointed out earlier, people in regional areas are three times more likely to be killed or seriously injured on our roads. The Nationals and I support this legislation. It is good that the Minister for Road Safety has brought this legislation to Parliament. It may have been a long time coming, but it will provide the police with powers that they previously have not had. It must be a real frustration for police to pull over a driver and not have the ability to force them off the roads. I certainly support the legislation in that respect.

MRS M.H. ROBERTS (Midland — Minister for Road Safety) [5.53 pm] — in reply: I thank the members for Hillarys, Kalgoorlie, Belmont, Armadale, Girrawheen and Roe for participating in the debate on the Road Traffic Amendment (Impaired Driving and Penalties) Bill 2019, and for their generally very constructive comments. They all indicated their support for this legislation, and that is, of course, very much appreciated. Members have made a lot of thoughtful comments about the bill. The bill deals primarily with people who drink and drive, or use drugs and drive, or a combination of both, and seeks to increase the penalties for that offence. As has been correctly noted by all the members who spoke on the bill, the chief consideration in this bill is the ability to put in place a 24-hour stop for a driver who is under the influence of methamphetamine. I turn to the report that was handed down a few years ago by the Community Development and Justice Standing Committee of this Parliament, titled “Are we there yet?” That is an excellent report, as I commented by way of interjection to the member for Armadale. That committee was chaired by the member for Girrawheen, and the continued interest and support of both the member for Girrawheen and the member for Armadale of road safety measures is appreciated.

As is often the case when we deal with road safety, just about every member in this place is a driver, so I expect everyone will have a view on road safety. We are also members of families and members of the community. I think it is only natural that all of us worry about our family members on the roads. Often we are worried not so much about the behaviour of our family members on the road but that of other road users. In this legislation, we are trying to deal with and crack down on people who use drugs and drive or drink and drive. We are doing that by increasing the penalties and putting in place a driving prohibition. When it comes to road safety, that is one part of the message. The member for Armadale and other members have commented that before the random breath testing legislation came into place, people thought it was okay to drink and drive. I have spoken to a lot of people whose experience in Western Australia, even after the RBT legislation came into place and it became an offence to have a blood alcohol content of .08 or higher, and, in turn, .05 or higher, was that that was okay, so long as they did not get caught. There was a view that if they were a bit over the limit and they took the back streets, that was okay, and hopefully they would get home safely and hopefully they would not get caught by the police.

Over the last 20 or 30 years, community attitudes to drink-driving have changed. Therefore, whilst this legislation deals with penalties, sitting alongside that, we need a change in community attitudes. Thirty years ago, people thought it was okay to drink and drive. A lot of people thought they were still good drivers after a few beers or a few wines or whatever. These days, I think community attitudes have changed, dramatically. Most people now think it is abhorrent and repugnant that someone would drink and drive, or use drugs and get behind the wheel of a vehicle. Therefore, what is even more important than the penalties we put in place is community education and belief. We need to bring the community with us on matters of road safety. Often, Parliament has to take the lead. The community might not have had that perception had Parliament not had the foresight 40 years ago or so to bring forward legislation to put the .08 BAC measure in place. When it comes to road safety, we have to do a bit of leading. We have to be in the penalty space, which comes from us in Parliament, and we have to be in the enforcement space, which is about the number of random breath tests that the police do. The final part is changing community perception. All the recent statistics indicate that community attitudes to drink-driving have changed significantly over time, and that fewer people who are involved in fatal and serious crashes are under the influence of alcohol.

Mr Acting Speaker (Mr I.C. Blayney), I realise that you will adjourn the debate in a moment. Tomorrow, when we come back to this bill, I intend to continue my remarks and to respond more directly to some of the issues that were raised by the individual members who spoke in this debate. That will, of course, include the questions that were put to me by the member for Hillarys and other members.

Debate adjourned, pursuant to standing orders.

Sitting suspended from 6.00 to 7.00 pm