ROAD TRAFFIC AMENDMENT (DRIVING OFFENCES) BILL 2018

Second Reading

Resumed from 21 June.

MR P.A. KATSAMBANIS (Hillarys) [4.30 pm]: I rise as the lead speaker for the opposition on the Road Traffic Amendment (Driving Offences) Bill 2018. I highlight at the outset that the Liberal opposition certainly supports this legislation, wishes it a speedy passage and, if anything, thinks that it probably does not go far enough—but I will discuss that in a little while. The bill amends the Road Traffic Act to expand the circumstances of aggravation that apply to dangerous driving causing death, grievous bodily harm or bodily harm. Part 3 introduces a regulatory provision, which I will spend a bit of time speaking about because it is the main part of the bill and the most important part on which we need to concentrate.

The bill does not change any of the elements or the definition of "dangerous driving causing death, grievous bodily harm or bodily harm" but focuses solely on aggravation, which is important because the charge of dangerous driving causing death, grievous bodily harm or bodily harm carries a serious penalty. It is a serious criminal offence and carries a penalty of a maximum 10 years' imprisonment; there is no floor—no minimum—but a maximum of 10 years. In circumstances in which aggravation applies, the maximum penalty will be doubled to 20 years to take into account the aggravating circumstances. As the law stands in section 49AB of the Road Traffic Act, the circumstances of aggravation to which the penalty applies relate to when a person is driving a stolen vehicle, when a person is driving 45 kilometres or more above the speed limit or when a person is driving a vehicle to escape pursuit by a police officer. That all sounds relatively fair. If someone is driving a stolen vehicle and trying to escape a police pursuit or speeding excessively, those are aggravating circumstances and the offending driver has clearly demonstrated that he was reckless at very best when driving on the road. Obviously, that person has exacerbated their recklessness by causing death, grievous bodily harm or bodily harm through dangerous driving.

In March 2017, the matter relating to the tragic and senseless death of a young lady, Charlotte Pemberton, was determined in the District Court. She was a passenger in a vehicle that was driving down a road. The driver of the vehicle of which Charlotte was a passenger was turning right at an intersection when a man by the name of Dylan Adams appeared on the scene riding a 1200cc Harley-Davidson motorcycle at extraordinary speeds. I will talk about those speeds in a moment. The appearance of the motorcycle at such speed was totally unforeseen by the driver of the small car—I think it was a Hyundai, from memory—that Charlotte Pemberton was in. The area is a 60-kilometre zone, and varying estimates have the rider going between 90 and 100 kilometres an hour, which is super-excessive and at least 30 kilometres, possibly 40 kilometres, over the speed limit. The collision led to the death of Charlotte Pemberton; a tragic and senseless death and the waste of a young life. I will speak about the impact of the collision on Miss Pemberton's family and everyone around them in a minute. That dangerous driving at excessive speeds had absolutely tragic consequences.

It transpired that Mr Adams held a motor vehicle driver's licence but not a motorcycle licence. He was driving, as I said, an extremely powerful Harley-Davidson motorcycle. When I was a young man, a teenager, I knew a lot more about cars and motorcycles than I do today, but I think 1200cc is close to being the most powerful motorcycle on our roads. In the words of the sentencing judge in this case —

> CCTV footage shows the motorcycle streak into the intersection like a missile, which is what it had become by that stage.

It was, unfortunately, an unguided missile that struck the vehicle that Charlotte Pemberton was travelling in. The circumstances of aggravation could not be applied to the case. The circumstances that I read out before that currently exist had not been breached. Clearly, there was gross recklessness and serious consequences but Mr Adams had to be sentenced solely as a dangerous driver. During sentencing, the judge made some rather harsh comments about Mr Adams, remembering that the crime he was charged for, pleaded guilty to and was convicted of had a maximum penalty of 10 years' imprisonment. I will quote some of the judge's comments in his sentencing remarks. He stated —

> He has a clear attitude of disregard for road laws and the safety of himself and others. Both those matters, in other words, disregard for himself and others, are circumstantial evidence of the wilfulness of his behaviour and also why his behaviour is of concern to the community.
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> …
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> Mr Adams' behaviour was wilful and selfish in the highest possible degree. Once he committed to this manoeuvre only luck was going to prevent a massive catastrophe with human life and safety, including his own, at stake. Mr Adams deliberately rolled the dice.

I agree with the judge. The judge went on —

> There was no error of judgement, no momentary distraction or aberration. Mr Adams saw a chance to get his thrills and show off notwithstanding that clear and obvious risk to the public and himself.

…

The crash was totally preventable, it was senseless.

I agree with all those statements. I think any fair-minded member of our community and the vast majority of law-abiding citizens out there would agree with the sentencing judge's comments. When it came to imposing the sentence, the judge said —

> I find that this is a very serious example of its kind which only just falls short or outside of the relatively rare category of cases which enliven sentences close to the maximum.

That is all well and good. It was just outside the maximum. The maximum is 10 years and based on all those remarks, I think any person in our community would expect that Mr Adams would have received seven, eight, maybe nine years' imprisonment. In the end, what the judge delivered was based on precedent and the directives of higher courts and the Court of Appeal over time. The judge decided that the right sentence in this case was five years. He discounted the sentence by 10 per cent for a guilty plea. In all of Mr Adam's wrongdoing, good on him for pleading guilty and not dragging out the horror for Miss Pemberton's family and not exacerbating the immense damage that he had caused. The judge then also gave a three-month dispensation for some other mitigating factors that he took into account. The total sentence was four years and three months.

There was community outrage about that sentence, as there should be, because it was totally inappropriate and inadequate. This occurred in the early days of the new Labor government. To the credit of the Minister for Road Safety and the government, they looked at this case. They listened to the pleas of the Pemberton family to fix this. I absolutely commend the family. They have stood resolute. They have suffered enormous loss and grief, yet they have wanted to utilise the loss of their beautiful young daughter to effect real change. They have campaigned very strongly for tougher and stronger laws. I commend the minister and the government for listening and for bringing this legislation to the house. We have all been around parliamentary procedure for a long time. We recognise that from March 2017 to when this legislation was read into the house before the winter break is not an inordinately long time in parliamentary procedure to give instructions, draft the bill, get cabinet clearance and get the legislation into the Parliament. Sometimes that can be done more quickly, but this was done in relatively quick time. I do not criticise that in any way. It is a good outcome.

The amendments that we are making today will make the road traffic legislation tougher and better. They will mean that the offence committed by Mr Adams, and by people like him who have complete and utter wilful disregard for community safety, will fall under the category of aggravation and be subject to a higher maximum penalty—in this case, 20 years' imprisonment. Part 2 of the bill seeks to amend section 49AB of the Road Traffic Act, which provides that driving at 45 kilometres an hour or more above the speed limit is a circumstance of aggravation, and reduce that to 30 kilometres an hour. That is a logical and sensible amendment. It passes the reasonable-person test. It certainly brings this section of the Road Traffic Act into line with the types of penalties that are usually imposed on people who speed at over 30 kilometres an hour above the applicable speed limit in a particular area, who are treated as though they have gone to the absolute worst point as far as speeding driving is concerned.

This horrific crash—it was not an accident, unfortunately—was caused by the wilful disregard of one man, as I said earlier. Mr Adams was calculated to have been driving at 90 to 100 kilometres an hour in a 60-kilometre-an-hour zone—so at between 30 and 40 kilometres above the applicable speed limit. The police have for many years managed to calculate driving speeds pretty accurately, and they were able to sustain the claim that Mr Adams was driving at 94 kilometres an hour. Irrespective of that, there is a difference between driving at 30 kilometres an hour above the speed limit and driving at 45 kilometres an hour above the speed limit. This bill will close that gap, and that is great. This is an important community safety provision, and we should support it.

The other change that is made in this bill is that it will add a new set of circumstances of aggravation. The current circumstances are driving a stolen vehicle, driving at excessive speed—which will now be defined as driving at 30 kilometres an hour above the speed limit—and driving to escape pursuit by a police officer. The first added circumstance of aggravation is that the person has never held a prescribed authorisation, or holds a prescribed authorisation but the prescribed authorisation does not authorise the person to drive a vehicle of the kind concerned. That would cover the case of Mr Adams, who was driving a motorcycle but had only a vehicle licence, not a motorcycle licence. It would apply equally to a person who has a motor vehicle licence but drives a 10-tonne truck without the appropriate licence and the necessary qualifications to obtain a licence to drive a 10-tonne truck. The other circumstances of aggravation are that the person held a licence but has ceased to hold a licence, the person has voluntarily surrendered their licence, their licence had expired, or the person has driven in breach of an alcohol interlock condition of their authorisation. I think that would pass what we might call the pub test or cafe test—the reasonable person at the Northshore Tavern or having a coffee at Lot One Kitchen in Hillarys. I think it would pass that test, absolutely. Again, we support that. It will broaden the range of offences that involve circumstances of aggravation, and those offences will incur a higher penalty. I do not think there is any argument that a person who does not have a licence to drive, does not have a licence to drive the vehicle they are driving, is

disqualified from driving or has handed in their licence should not be entitled to drive a vehicle. Our society and our system has also deemed that if a person has a problem with alcohol and needs to have an alcohol interlock but wilfully chooses to ignore that and drives in breach of that condition, they ought to suffer the consequences of their terrible actions.

I have flagged these issues publicly, and I am happy to stand behind that. This bill will mean that people who find themselves in the same circumstances as Mr Adams will be subject to a higher maximum penalty. That is good. That should be the case. If these amended circumstances of aggravation had been able to stick to a person like Mr Adams, he would have been given a longer sentence than four years and three months' imprisonment. His sentence would certainly have come closer to meeting community expectations. The problem in our legal system is that sentences are never linear. As I have read out, the judge in the case of Mr Adams found that this is a case "which only just falls short or outside of the relatively rare category of cases which enliven sentences close to the maximum". As I have said, "close to the maximum" would be eight years, nine years or 10 years. It would be in the top 20 per cent, if you like, of the sentencing range. Therefore, we would expect that he might have been given six or seven years' imprisonment. It was just outside that maximum range. However, no, he got four years and three months. There is absolutely no guarantee that had Mr Adams been subject to a circumstance of aggravation, the sentence that he was given would have been doubled. There is no guarantee. There is a hope. I do not want to raise it above that. I do not even want to say that it is an expectation, lest the judiciary would suggest that we are binding it in some way. There is certainly a hope and a desire that it would lead to at least a doubling of the sentence. However, even then, does the community believe that a person who has displayed gross and wilful recklessness and disregard for safety and human life, and who is subject to a maximum penalty of 20 years, ought to be given a penalty of eight years and six months, using the facts and circumstances of the death of Charlotte Pemberton as an example to highlight that? I do not think the public would buy that. Again, I do not think the public would buy it when a maximum sentence of 10 years is available and Mr Adams got only four years and three months. I am not going to read extensively from the judgement, but when we read it we see that he had a very bad driving record already. The judge made very disparaging remarks. I will quote from page 10 of the judgement —

> … it also informs my view that his rehabilitation prospects are minimal.

Yet he got only four years and three months when he could have had a sentence of up to 10 years. By bringing in this legislation, yes, people in cases with the same facts and circumstances would get a higher sentence. I have no doubt they would get a higher sentence, but I cannot look the people of Western Australia in the eye and say that offenders would get at least a doubling of the sentence because the maximum sentence goes from 10 to 20 years. As the judge in this case said about the acts of Mr Adams, it is a bit like rolling the dice and hoping that we get a good outcome. I am not a gambling person but I know that some people are. It is potluck. That is why, as an opposition, we have flagged that we would be strongly supportive of a mandatory minimum sentence that meets community expectations.

When someone does really serious and dangerous acts that result in the death of a young 19-year-old who the judge described as a good citizen, a good partner and much loved, we would expect the sentence to be a lot higher. If we could not get the circumstances of aggravation to stick, we would expect certainly up to six or seven years at least. If we could get the circumstances of aggravation to stick, we would expect 10 years or more—no doubt about that. We have continually suggested that this would be an area in which we should consider mandatory minimum sentences. It would send a strong message. We would not only toughen up the maximums, but also create a floor. Then if other families such as the family of Charlotte Pemberton suffer this fate, they will at least know that the perpetrator of the crime—it is not a driving offence; it is a crime—would be appropriately punished. That would meet community expectations, indicate the seriousness and gravity of the offence and send a strong message that they should not be reckless and act in this wilful manner of disregarding the law and the consequences of their actions. The stronger we can get that message out there, the better off we will be as a community.

We have done such wonderful things in road safety over the last 40-odd years that I can remember, and we will continue to do more. Most of it has been through getting the message across to drivers and passengers that safety matters are really important. Wearing seatbelts, not drink-driving, not speeding excessively, driving to the conditions, changes in cars and enforcement are all important. Enforcement is the last resort for both the minor range of driving offences and these horrible major ones that we want to avoid. We all want to get to zero deaths and serious injuries on our roads. That would be the ideal outcome and we should never stop until we get to that. As an opposition we have flagged that. As an opposition we know that elements within the government would consider and support that, but we also know elements in the government are ideologically opposed to any form of mandatory minimum sentences. I welcome a debate on it at some point because I think it will make our laws stronger. It will give our community a lot more certainty and, because we would be demonstrating to the community that we are with them and their view of serious criminality, it would lead to greater regard and respect for our Parliament, our legal system, our judiciary and the laws of our state. It would reinforce the strength of the rule of law in our community. I will not say any more on that because I can wax lyrical about protecting our

community from serious crime. I will never back away from that, because I think we need to protect our community as much as possible and properly punish those offenders who disregard our laws.

I will move to part 3 of the bill, which makes a change to the Road Traffic (Authorisation to Drive) Act 2008. It brings in a regulatory clause with a new section 4 of that act. That act is under the control of the Minister for Transport, I believe, in the executive orders. It allows the Minister for Transport in consultation with the minister responsible for the Road Traffic Act, which under the executive orders is the Minister for Police, to bring in regulations to exempt —

(a) holding a class of authorisation specified in the regulations; and

(b) driving a kind of vehicle specified in the regulations for that class of authorisation.

It exempts those drivers from the operation of these changes that we are bringing in. People who do not hold an appropriate licence through part 2 will be deemed to have been driving in circumstances of aggravation if they are convicted of dangerous driving causing death, grievous bodily harm or bodily harm. That is what we are doing in part 2. In part 3, the Minister for Transport and the Minister for Police can exempt certain people from those laws that we are passing in part 2. At a briefing, we tried to obtain some clarity around these provisions. I would like the minister to confirm this; hopefully, she can do it in her response. It is the only issue that I think needs further consideration in this bill. I would like the minister to confirm that there is no current intention to exercise this regulatory power and perhaps give us some examples of when she thinks it may be applied in the future. There has been a bit of speculation around it possibly applying to changes in driving around autonomous vehicles and the like in the future. I would have thought that if we are looking down the track towards changes that we do not even know about yet—we certainly do not know the breadth and scope of any changes—it would be in the realm of Parliament, not regulation, to do it. I also think that it looks a lot like the types of Henry VIII clauses that my colleagues in the Legislative Council would probably take some interest in. Without feathering them in any way, having been a member of the Council for four years before I came to this chamber, I understand the nuances of Henry VIII clauses and the sorts of views that members of the house of review take on those clauses. There might be a good reason, but as I said earlier, I think it is incumbent on the minister to give us some guidance on it to either confirm that there is no current intention to use this regulatory power or, if there is such an intention, to let us in on her thinking around it. I think that would inform the public and certainly would inform Parliament in making a decision on the bill.

With those words, I again commend the family of Charlotte Pemberton. They have shown wonderful grace in the most distressing of circumstances. The changes we are passing today will absolutely be cold comfort to them personally in dealing with the grief and loss they have suffered through the reckless act of Mr Adams. However, they can take comfort from the fact that the grave circumstances that have befallen their family will lead to a legislative change, once this bill gets through the other place, that will make our road traffic laws better and stronger. It will make sure that in future people like Mr Adams will receive more adequate punishment than they currently do for these types of acts. As I said, well done to the government for actually doing this. I think people are calling this Charlotte's Law; I have no problem describing it in that way. It is not only the fact that circumstances around the horrific collision that caused the death of Charlotte Pemberton and the process that led to the sentencing of the offender have given rise to this law; the strong public advocacy of the family for tougher laws also gave rise to this bill, which will become law once it is passed through both chambers.

I just wish that the government would strongly consider mandatory minimum sentences. In the examples I gave before, there is absolutely no guarantee whatsoever that, in the same fact circumstances, someone would now get at least eight years and six months—a doubling of the sentence they previously got—and hopefully a higher sentence. Courts will come up with procedures in time, but I think I reflect a broad section of the community and its view that, in such horrific circumstances, a minimum floor should be introduced for these wanton and wilfully dangerous acts. I hope that in future we consider that.

Debate adjourned, on motion by **Mr D.A. Templeman (Leader of the House)**.

House adjourned at 5.01 pm