

next week, the Speaker would designate a day in the following week to recall the Assembly. I cannot confirm what date it would be. It would possibly be the tenth, which is Tuesday, but that is yet to be confirmed by the Speaker.

This is a reminder to all members of this chamber to anticipate that and be aware of that in their diaries. I know that a number of members will have school graduations to attend next week during the mornings, so we anticipate that this house would sit at either midday or just after midday on whichever day is determined. Once that information is available, all members will be advised. I ask the house to support, first, the suspension of standing orders and then the passing of this motion so that the anticipated message from the Legislative Council can be dealt with on the date specified by the Speaker. We would then deal with those amendments as per the normal procedure.

MR Z.R.F. KIRKUP (Dawesville) [12.10 pm]: The opposition supports the suspension of standing orders and the motion that carries with it. We anticipate that at the end of the year anyway. Typically, motions like this would be moved to ensure that we can finalise a sitting that would already have been scheduled. Of course, this is an extraordinary circumstance. We were anticipating a recall as a result of the Voluntary Assisted Dying Bill being dealt with by the Legislative Council, as we understand, within the parameters of next week, whatever that looks like, and then a variety of amendments coming back to this place to be dealt with, hopefully, as the Leader of the House has already forecast, in the subsequent week. The opposition has anticipated for some time that it was likely to be on 10 December and a number of our members have already made arrangements for that. We have spoken about this before. As the Leader of the House indicated, we would want to ensure that the maximum amount of time is allocated during that day, in the daylight hours, noting that the house is likely to be recalled for a single day to deal with the Voluntary Assisted Dying Bill. Undoubtedly it will go late, but of course we would like as much time as possible while the sun is shining to deal with it, rather than possibly sitting until 3.00 am or 4.00 am-plus on the Wednesday thereafter. We appreciate that, as with any recall, we will have the opportunity to have question time and the usual standing orders suspension on matters of public interest to ensure that the opposition continues to do its job of scrutinising and holding the government to account. The opposition stands in support of this motion for the good order of the house. It would be done routinely anyway at the end of the year and, of course, this is an extraordinary circumstance dealing with an extraordinary bill. The opposition lends our support to the government for the suspension of standing orders.

Question put and passed.

ROAD TRAFFIC AMENDMENT (IMPAIRED DRIVING AND PENALTIES) BILL 2019

Consideration in Detail

Resumed from 27 November.

Clause 41: Section 111 amended —

Debate was adjourned after the clause had been partly considered.

Mr P.A. KATSAMBANIS: I will not traverse the ground we went over yesterday about radar detectors. I want to focus on some serious concerns I have about the breadth of proposed new section 111(1)(b) in the Road Traffic Act, which is really the only substantive change being made. I will try to outline my concerns about this. What was the old section 111(1) and which under this amendment will become new section 111(1)(a) clearly states —

The Governor may make regulations —

- (a) for any purpose for which regulations are contemplated or required by this Act ...

It repeats “by this Act” further on. Section 111(2) was read to be broadly in line with that provision. Even under the proposed amendments, only proposed section 111(1)(a) is referred to in proposed subsection (2). Effectively, paragraph (b) of proposed section 111(1) will come in as a standalone paragraph. It states that the Governor may make regulations —

- (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.

Interestingly, it does not make any reference to the act. Clearly, by reading proposed subsections (1) and (2), proposed paragraph (b) is excluded from any reference to “required by this act”. It is broader, and it looks like an infamous Henry VIII clause, which inappropriately delegates legislative authority. I would have preferred a drafting that included in the preamble those first parts of paragraph (a) as they are in the amendment. I would have said that the Governor may make regulations for any purpose for which the regulations are contemplated or required by the act, and (a) may make all other such regulations et cetera, and (b). I think that would have worked. In case the minister or the public think I am just splitting hairs here, I want to focus on what the explanatory memorandum says this proposed paragraph (b) can do. It basically says that regulations can be made to regulate the use of devices in vehicles in both positive and negative terms. A negative term is, “You cannot use a laser jammer. You cannot use a radar detector”, as the minister has indicated, and, “You cannot use your mobile phone”, although we have

another section for that—“You cannot use a music device”, or whatever the case may be. We understand the negative terms. But a positive term in these sorts of regulations may be a mandatory term—they may mandate an actual use of a device. I am not suggesting that the minister wants to do this, or has any intention of doing it, but it would be permitted under the drafting that we have today. If it were done by a future minister at some time, it ought to be done by legislation; it ought not be done by regulation.

Dr D.J. HONEY: Madam Acting Speaker, I would like to hear more from the member for Hillarys.

Mr P.A. KATSAMBANIS: The way we have tried to fiddle around with the existing provision, the term is too wide and it looks like an inappropriate delegation of legislative-making power to the executive. I am not suggesting that any malice is intended by the government or the minister, but in the future we just do not know what would happen. I do not want a minister in the future to say, “You must use a particular device in a car that is not a standard kit”, and does it by regulation. We have done that in the past. We have mandated seatbelts, for instance, but we did that by legislation. That is my concern about the drafting of this provision. I know that when the bill gets through this place, it will go to the other place and members there may want to send it to the Standing Committee on Legislation; they do those sorts of things. They also spend an inordinate amount of time wondering about Henry VIII clauses and whether they are appropriate in all cases. I am flagging this at the moment because I have a concern about the drafting of this provision. It may well be that at a further time we may revisit it. As I said, I would have liked to see this provision read down by what is contemplated or required by this act. When we consider the internal consistency of the entire proposed section, it is clear that proposed paragraph (b) is not read down by what is contemplated or required by the act. That is my concern about this provision.

Mrs M.H. ROBERTS: Firstly, this is not a Henry VIII clause in any shape or form. Secondly, the advice I have received is that the member’s suggested alternative wording for the way proposed section 111(1)(a) and (b) might be framed for the preamble would make no substantial difference at all. On my advice, therefore, it would be a waste of time doing that and have no particular legal import. To somehow specify that we will be talking about regulations only to the Road Traffic Act is implicit in the proposed section. There is no other act we will make regulations for under the power of proposed section 111(1)(b). Further, concerning the positive and the negative, we might specify that something has to be fitted in a particular way, for example.

My final point is that, as I said when we last debated this clause in this bill, all regulations can be disallowed. They can be disallowed in the upper house. This will put in place a simple process. For example, if the upper house voted down this provision, it would effectively delay the implementation of, for example, banning radar detectors or some potential lifesaving device or the manner in which something should be used, until legislation can be put through both houses of Parliament. As I said in my response to the second reading debate, on average, that will probably build in about a year’s delay. Regulations can be drafted more quickly. I think just about every Minister for Road Safety whom I can recall, and police ministers before there was a specific Minister for Road Safety, had generally tried to put in place measures in a bipartisan way for the safety of the community, to keep people safe on our roads, to protect people’s families and to stop death and injury on our roads. This is not something people play some kind of nasty politics with, generally. There is usually pretty broad consensus about the implementation of measures that are in the best interests of all road users. None of us wants to hear that one of our loved ones or friends has been killed in a road crash and that it could have been avoided had action been taken.

I think the regulation power is a positive one. I looked at the jurisdictions around Australia that have a similar regulation power. The member for Hillarys argued that he thinks the power probably already exists under the existing head of power. Unfortunately, that is not the clear view of the State Solicitor’s Office. For clarity, it thinks it is better to phrase it this way and to give an unambiguous head of power for that regulation-making capacity. One thing we can guarantee is that any regulations on road safety will receive appropriate scrutiny in the upper house, where they are more than capable of being disallowed even if our government or a future government supports those regulations. There is already that check and balance.

Not to support this provision would tie up people in red tape and inevitably delay some positive innovation in the future. Even if there is broad agreement across the Parliament, many legislative priorities come up each year; it is a time-consuming process. When a bill is brought into this house, it usually has to lay on the table for about three weeks before it can even be brought on for debate. I caution against not supporting this clause.

Mr P.A. KATSAMBANIS: I accept the minister’s explanation. I think we will have to beg to differ on this. Although disallowance is a mechanism available to Parliaments, it is very much a second-best mechanism because we know sometimes regulations can come into force, and complying with them can cause a lot of dislocation. They can be disallowed later, and reversing what has been put in place can be a very costly process for both the general public and business. We want to avoid that. In this case, nothing is contemplated, which makes it more academic, if you like. The minister has indicated quite clearly that the only device she is contemplating right now is radar detectors, which are used by some people. As we have discussed, there seems to be a little bit of debate. The State Solicitor’s Office has said that it is not 100 per cent certain that the current provisions will allow the minister the power to do what she wants. My opinion is neither here nor there. The minister has chosen to accept that advice and move this clause. I think the clause is too broadly worded, and not read down in the way other provisions are

read down. I am not concerned about what the minister intends to do; it is what might happen in the future. I hear the minister's explanation and I accept not only the minister's good faith but also her longstanding commitment to road safety and that she is not intending to do anything nefarious or wrong in any way.

I generally agree that we want a community-wide approach to road safety. As I said in my contribution to the second reading debate, we want to stop bad driving practices and we want to provide for roads to be as safe as possible for all road users and all our community. However, I think given this provision's positive and negative terms and its potential impact, it has not been drafted in a way that makes it better legislation. In fact, it detracts from the entire internal consistency of the regulation-making power. We know it will get through this place. However, I have no idea what the other place will do. The Liberal Party, of which I am a member, has only a quarter the number of members in the other place, so it is not as though we can do anything to deal with that. If it goes onto the statute books in this way, even though I do not think it would be misused by this minister, I or anyone in the Liberal Party who might be a Minister for Road Safety in the future, I do not think it is well drafted. I think it escapes the boundary of inappropriate delegation. In fact, I think it falls over the boundary of inappropriate delegation. It is, by rights, a Henry VIII clause because it confers delegated legislation-making authority, so it is a Henry VIII clause in its pure sense, but the debate is always: is it an appropriate delegation or an inappropriate delegation? In this case, in my opinion, it does not pass that test. The minister may beg to differ. However, I will not continue to labour the point on this. I think I have made my point on it and will leave it to the goodwill of this and the other place.

Mrs M.H. ROBERTS: I think this is a well-drafted clause. It is sensible and we are putting it forward with an abundance of caution. It is recommended by the State Solicitor's Office. I do not agree with the member that this is a delegation. It does not just delegate a power to the executive government; it is a regulation-making power and those regulations have to be laid before both houses of Parliament. It is well framed, good, sensible legislation. There are already extensive regulation-making powers for the Road Traffic Act. This proposed section is commonsense and clarifies one aspect of a regulation-making power. It will certainly streamline things in the future.

I note that the member said that if he or any other Liberal ever has the opportunity as Minister for Road Safety to use that power, they would not abuse it, and that he is confident that I would not abuse it—but it is not a power. Presumably he thinks some future Labor minister might abuse it for some reason, but it does not give power to the minister or the executive government. It is a regulation-making power and it is Parliament that says yea or nay to regulations. I do not accept the arguments put forward. I think the only real practical reason for opposition to this legislation is to deny the government the opportunity to streamline things so we can quite quickly progress sensible, agreed amendments. I do not think the member need fear any Labor ministers having regulations rubberstamped in the upper house any time over the next few decades. The current composition of the upper house is such that I cannot see the Labor Party gaining a majority there for decades. After the resounding victory we had here in the lower house in 2017, one would think that we might have gained a majority in the upper house, but we did not even come close. The member should not underestimate the Liberal Party's position. The fact is that if he adds the Liberal Party's quarter of the membership of the upper house to the Labor votes, it is a simple majority. We can take a bipartisan approach and we can, with our joint numbers in the upper house, dictate an outcome.

Division

Clause put and a division taken, the Acting Speaker (Ms M.M. Quirk) casting her vote with the ayes, with the following result —

Ayes (38)

Ms L.L. Baker
Mr I.C. Blayney
Dr A.D. Buti
Mr J.N. Carey
Mr V.A. Catania
Mrs R.M.J. Clarke
Mr R.H. Cook
Ms M.J. Davies
Ms J. Farrer
Mr M.J. Folkard

Mr T.J. Healy
Mr M. Hughes
Mr W.J. Johnston
Mr D.J. Kelly
Mr R.S. Love
Mr M. McGowan
Ms S.F. McGurk
Mr S.A. Millman
Mr Y. Mubarakai
Mr M.P. Murray

Mrs L.M. O'Malley
Mr P. Papalia
Mr S.J. Price
Mr D.T. Punch
Ms M.M. Quirk
Mr D.T. Redman
Mrs M.H. Roberts
Ms C.M. Rowe
Mr P.J. Rundle
Ms R. Saffioti

Ms J.J. Shaw
Mrs J.M.C. Stojkovski
Mr C.J. Tallentire
Mr D.A. Templeman
Mr P.C. Tinley
Mr R.R. Whitby
Mr B.S. Wyatt
Ms E.L. Hamilton (*Teller*)

Noes (13)

Mrs L.M. Harvey
Dr D.J. Honey
Mr P.A. Katsambanis
Mr Z.R.F. Kirkup

Mr A. Krsticevic
Mr S.K. L'Estrange
Mr W.R. Marmion
Mr J.E. McGrath

Ms L. Mettam
Dr M.D. Nahan
Mr D.C. Nalder
Mr K.M. O'Donnell

Mrs A.K. Hayden (*Teller*)

Clause thus passed.

Clauses 42 to 52 put and passed.

Title put and passed.