ROAD TRAFFIC AMENDMENT (BLOOD ALCOHOL CONTENT) BILL 2019

Second Reading

Resumed from 5 June.

HON CHARLES SMITH (East Metropolitan) [3.38 pm]: I believe I was concluding my contribution to the earlier debate, in which I voiced my support for the Road Traffic Amendment (Blood Alcohol Content) Bill 2019. Anything that the government can do to decrease road traffic trauma is always warmly welcomed. Believe me, picking deceased people from car crashes is a very unpleasant thing to have to do, so anything that reduces the road toll is a good thing. I will conclude by saying that perhaps in the coming years, the government should try to whittle it down to zero alcohol to be able to operate vehicles, machinery and so on. Therefore, I support the passage of this bill.

HON MARTIN ALDRIDGE (Agricultural) [3.39 pm]: I rise to make a contribution to the debate on the Road Traffic Amendment (Blood Alcohol Content) Bill 2019. I indicate from the outset that the Nationals WA will be supporting the bill through the Legislative Council. I want to talk a little bit about some of the aspects, particularly the regional implications of this bill. I want to get some understanding from the government about how this bill will work when there could well be delays in accessing evidential breath machines in regional Western Australia.

Members will be aware that random breath testing is not something new; in fact, it was introduced into Western Australia in 1988. Since its introduction, we have seen some significant changes. We have seen the reduction of the blood alcohol content level from .08 to .05.

The ACTING PRESIDENT (Hon Adele Farina): Order, members! Hon Martin Aldridge has the call. Those members wanting to engage in a private conversation should leave the chamber.

Hon MARTIN ALDRIDGE: In more recent times, we have seen a change to provide for a zero blood alcohol content for novice drivers. The definition of the term “novice drivers” includes learner drivers, provisional drivers with less than two years’ experience, overseas drivers with less than two years’ experience, and those in possession of an extraordinary driver’s licence. We have seen technological change; we now have high-volume detection in the form of booze buses. We have also seen driver behaviour change, and I will talk a little bit more about that shortly.

The Minister for Environment referred in his second reading speech to a 2012 study by the Curtin–Monash Accident Research Centre titled “A roadside survey of the blood alcohol concentration levels of night-time drivers in the Perth metropolitan area”, which was published in June 2014. On page 23 of this study, we see that data on metropolitan detections was taken and interpreted on three occasions—in 1999, 2000, and then again in 2012. Interestingly, when we look at these periods, in 1999 and in 2000 there was a positive blood alcohol content reading of 14.9 per cent and 14.7 per cent respectively. That was taken from 8 093 tests in 1999 and 7 624 tests in 2000. If we fast forward a decade to 2012, a sample of 8 435 drivers returned a 7.1 per cent positive detection. In the 12 years from 2000 to 2012, we have seen a halving of the number of blood alcohol content detections that were above legal levels. I would think there would also have been a significant increase in enforcement and detection activity during that period.

If members look at some of the data that is published by the Road Safety Commission, they will see it is quite interesting to compare some of the statistics around Western Australia. For example, the Road Safety Commission data suggests that in metropolitan killed or serious injury–type crashes, a BAC higher than .05 accounts for 6.1 per cent of those crashes. In regional areas, the average is 8.8 per cent. But when we look sub-regionally, we see that those numbers get much worse. In the great southern, 14.4 per cent of crashes involve a blood alcohol content above .05; in the south west, 15.9 per cent; and in the Kimberley, 21.7 per cent. The Kimberley has approximately 3.5 times the metropolitan average of killed or serious injury–type crashes when a blood alcohol reading of higher than .05 is detected.

We have seen a significant increase in detection enforcement over time; I have just mentioned some of those things. The road trauma trust account, which is a fund directed by the Road Safety Council and approved by the Minister for Road Safety, has certainly placed a greater focus and effort on detection and enforcement. It would be interesting to have a look at—I do not have the data, although I am sure it is available—how government, the Western Australia Police Force and the Road Safety Council target their funds towards detection and enforcement activity, particularly in light of some of those regional statistics, which are much higher than the metropolitan average, especially when servicing a region as remote as the Kimberley.

This bill removes the retrospective BAC calculation. As I said, this law dates back more than 40 years. I understand we are the last jurisdiction in Australia to remove this back-calculation method. Since that time, we have seen breath-testing technology change. It has become much more advanced, much cheaper and much more readily available. The back-calculation method factors in the time required to convey a driver to testing equipment. In regional Western Australia, there is not always an evidentiary breath machine close by.

I will quote from this report, “A roadside survey of the blood alcohol concentration levels of night-time drivers in the Perth metropolitan area”, which the Minister for Environment also quoted from in his second reading speech.
Western Australian RBT policy is based on a premise that a driver’s BAC will be on the ‘rise’ when stopped at an RBT site and therefore their evidentiary test reading (taken after the PBT) will be higher than their actual BAC level at the time when they were operating a vehicle. To account for this presumed BAC increase, evidentiary BAC readings are back-calculated to the driver’s “time of last drink”. These back-calculations are based on the formula that a BAC rises at 0.016 g/100ml per hour for two hours and then falls at the rate of 0.016 g/100ml per hour. If a driver can prove (convincingly) that they recall their time of last drink then that is the time used in the calculations however, more frequently, the time that the driver undertook the roadside PBT is substituted in the back-calculation process. To allow for the dispersal of mouth alcohol (estimated to disperse in approx. 8 minutes), the minimum allowable time span between a roadside PBT and the evidentiary test is 20 minutes. Typically, the evidentiary test is undertaken 30 minutes after the PBT and then 30 minutes is used in the back-calculation formula, resulting in a subtraction of 0.008 g/100ml from a driver’s evidentiary BAC result.

That is predicated on a formula that assumes that blood alcohol content will continue to rise for two hours after the last drink, and then will fall for two hours. What is substantially—the time of the last drink or the time of detection—will depend on the calculation that is used.

This study looked at night-time drivers in the Perth metropolitan area. There would not be too many occasions— I could not think of one—when a police officer would intercept a driver in the Perth metropolitan area and not be within 20 or 30 minutes of a police station and, therefore, an evidential breath-testing machine. More likely, the detention would probably take place roadside at some type of booze bus operation; therefore, the evidential breath-testing machine will be on site. But in regional Western Australia, the situation can be quite different. I am advised by the WA Police Force that each of our 170 police stations have evidential breath machines, and some have more than one, depending upon the size of the station and demand. I am also advised that specialist units, such as state traffic, which includes the regional enforcement unit, also have access to these evidential machines.

An evidential machine costs in the order of $10 000 and a preliminary breath-testing machine costs in the order of $1 100. We have 950 PBT devices in the metropolitan area and 550 of them in regional Western Australia. The current procedure is to delay the evidential breath test for a minimum of 20 minutes. As I have quoted from the Curtin–Monash Accident Research Centre report, it is typically undertaken 30 minutes post-preliminary detection. In regional Western Australia, in some instances, a person will be greater than 20 or 30 minutes from a police station.

Further information I have from the police force via the Minister for Police’s office on evidential breath-testing machines is that the regional enforcement unit has six, the breath and drug buses have four, and, as I just mentioned, each of the 170 police stations across metropolitan and regional Western Australia have one, with some stations having up to four units. There are multiple units at a variety of specialist units, including traffic enforcement groups 1, 2 and 3. That gives a bit of an understanding.

I was told at my briefing that it is possible for police to take these evidential breath-testing machines on the road and that police vehicles have power connections that would factor them in. But through conversations with regionally based police about this, I have learnt that that is quite rare, because often police stations will have just one of these machines. Taking it on the road means taking it out of the police station. If other vehicles are servicing that police district or, indeed, if the regional enforcement unit is operating within that district, they may not then be able to access that evidential breath-testing machine if it has been taken on the road. I am also told that taking this large device in a police car, with everything else that our police carry with them in their vehicles these days, is just not practical and therefore does not often happen.

I seek to understand this better from the minister. I understand the reason we are moving this way. I also understand that people who are currently being detected and charged with these offences are potentially advantaged by the back-calculation method, certainly in the metropolitan context. My concern is: what are the implications for a delayed blood alcohol evidential breath-test in regional Western Australia? I think it is the case that an evidential breath-test reading cannot be taken more than four hours after first detection. That is something that I recall from my briefing, and I think I heard Hon Michael Mischin talking about it. I do not know whether that will change under this new methodology—maybe that is something the minister can clarify—but what concerns me is whether there could be classes of drivers who are intercepted regionally, provide a preliminary breath test that indicates that they have a blood alcohol level higher than the legal limit, whatever that may be with regard to their licence, and could be advantaged or, indeed, disadvantaged by the time taken to convey that driver to an evidential breath-testing device. Although we are trying to resolve what appears to be an advantage to drivers who are drink-driving in the metropolitan area, I do not want the result, on the other hand, to be a situation in which regional drivers could potentially be disadvantaged or advantaged because of the distance to evidential breath-testing machines. From speaking with police, I know they would prefer a simpler process of dealing with drivers who indicate an illegal blood alcohol content, rather than these complex calculations that take place.
With the approval of the Minister for Police a few weeks ago, I was fortunate to visit the Boddington Police Station in my electorate. They stepped me through the process, and it is quite comprehensive. Unfortunately, I did not get to complete that conversation before that police station was tasked to a traffic accident on Albany Highway, but from the short time I spent with them, I certainly appreciated some of the challenges police face—not necessarily just a regional challenge, but also in terms of the way in which some drivers could be manipulating the system to their advantage. With those few words, I look forward to the minister’s reply to more fully understand some of the regional implications of this bill.

HON TIM CLIFFORD (East Metropolitan) [3.56 pm]: I rise as lead speaker for the Greens on the Road Traffic Amendment (Blood Alcohol Content) Bill 2019 and indicate our support for the bill. From what I understand, this bill amends a technical issue and will bring Western Australia in line with the rest of the states. The bill will shift the balance from letting off some drink-drivers who have a falling blood alcohol level, as shown by the Curtin–Monash Accident Research Centre, to capturing some drink-drivers who have a rising blood alcohol level, which is pretty much commonsense. The Greens will continue to support strong actions to protect drivers on the roads and legislation that keeps drink-drivers off the road.

Debate adjourned, on motion by Hon Sue Ellery (Leader of the House).