



NSW Legislative Assembly Hansard

Crimes Amendment (Road Accidents) Bill

Extract from NSW Legislative Assembly Hansard and Papers Wednesday 21 September 2005.

Second Reading

Ms DIANE BEAMER (Mulgoa—Minister for Western Sydney, Minister for Fair Trading, and Minister Assisting the Minister for Commerce) [8.58 p.m.], on behalf of Mr Bob Debus: I move:

That this bill be now read a second time.

Recent tragic cases in New South Wales and other States have highlighted the difficulties and consequences that may follow when drivers leave the scene of a collision and do not stop to render assistance to victims. Brendan Saul, a 9 year-old-boy, died after being struck by a car at Dubbo in January last year. Under this bill, a new offence of failing to stop, with much heavier penalties, is introduced into the Crimes Act in recognition of society's abhorrence of those who injure their fellow citizens and then abandon them to die. When a driver leaves the scene of an accident, leaving in his or her wake a dead or badly injured person without attempting to render assistance, the fundamental code of civilised society is breached. Every driver on our roads needs to be aware that with the privilege of driving on our roads comes a fundamental responsibility to our fellow drivers.

The bill creates section 52AB of the Crimes Act, which makes new indictable offences. The new section makes it an offence for the driver of a vehicle that is involved in a collision causing death or grievous bodily harm to fail to stop and give assistance in circumstances in which he or she knows, or ought reasonably to know, that the vehicle has been involved in such a collision. When the collision causes death, the maximum penalty for failure to stop is imprisonment for 10 years. When the collision causes grievous bodily harm, the maximum penalty for failure to stop is imprisonment for seven years. The maximum penalties applying in these cases are severe. The maximum penalties are equivalent to those for offences of dangerous driving occasioning death and dangerous driving occasioning grievous bodily harm in section 52A of the Crimes Act.

As a result no incidental advantage will accrue to a driver who flees and knows or ought reasonably to have known that death or grievous bodily harm was occasioned by the impact. The extension of the mental element to incorporate an objective element of "ought reasonably to have known" is warranted in the special circumstances of this offence. There should be no arguments about "actual knowledge" when objectively a person ought reasonably to have known that death or grievous bodily harm would result from a collision. The offences will apply to cases involving impacts occasioning death or grievous bodily harm. The definition of "impact" will be that used in section 52A of the Crimes Act. That definition is broad, extending to situations where vehicles run off the road or people are thrown from vehicles.

It will apply to any person who gets behind the wheel of a car—irrespective of age or whether they are licensed or unlicensed. The focus of the new offences is to ensure assistance for victims of serious vehicle impacts. Assistance may save a life, minimise injury, improve the prospect of recovery, alleviate suffering, and preserve the dignity of the injured or deceased. Failure to stop and assist in serious accidents should invite significant punishment. The requirement is to stop and give any assistance necessary that is in the driver's power to give. That is not to say that people must stop to perform first aid when they are not qualified to do so, or rescue someone from a burning car in dangerous circumstances. Obviously commonsense judgment will be required.

What is required is for the person to stop and take steps to assist directly or obtain expert help by contacting police or emergency services to ensure that professional expert assistance is obtained at the earliest opportunity. The action of drivers fleeing may thwart police in their ability to identify the drivers and collect necessary evidence. The presence of drivers at the scene ensures that the investigation is at no disadvantage. The creation of indictable offences of "failing to stop and assist" will also enliven a broader range of powers available to help a police investigation, such as, for example, the power to demand the name and address of a person when a police officer believes on reasonable grounds that the person may be able to assist in the investigation of an alleged indictable offence.

A person convicted of these offences will be liable to mandatory driver's licence disqualification. The offences will be relevant offences for the purpose of habitual traffic offender declarations and disqualification periods. There is provision to deal with the proposed section 52AB indictable offences summarily or on indictment in the District Court, at the election of the prosecution. The bill also amends section 70 of the Road Transport (Safety and Traffic Management) Act. Section 70 will be similar to section 52AB in that it will also incorporate the objective test where the driver knew or ought reasonably to have known the result of the accident. However, the offence will apply to drivers of vehicles involved in collisions causing any physical injury. The definition of "impact" will also be that used in section 52AB.

Section 70 will continue to carry mandatory licence disqualification and be a relevant offence for habitual traffic offender purposes. An education campaign aimed at informing drivers of their responsibilities will be developed prior to the commencement of the legislation. With these new sanctions, motorists who flee the scene of an accident will face tougher penalties and a greater chance of being caught. The new offence strips away any incentive that may exist in the current penalty structure to flee or evade police. Eighteen months ago on a sunny afternoon a small boy died in a terrible collision. Thanks to the long campaign of his father, this bill is a stepping stone of legal reform recognising that sad death. In a very real sense, this is Brendan's law. I commend the bill to the House.