



NSW Legislative Assembly Hansard

Crimes Amendment (Grievous Bodily Harm) Bill

Extract from NSW Legislative Assembly Hansard and Papers Wednesday 2 March 2005.

Second Reading

Mr BOB DEBUS (Blue Mountains—Attorney General, and Minister for the Environment) [10.14 a.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Crimes Amendment (Grievous Bodily Harm) Bill 2005. This bill proposes an amendment to the Crimes Act 1900 to ensure that offences under that Act relating to the infliction of grievous bodily harm extend to the destruction by a person of the foetus of a pregnant woman. The very tragic case involving the death of Renee Shields' unborn child, Byron, highlighted a deficiency in the law in relation to the charging of offenders. I commissioned a retired judge, the Hon. Mervyn Finlay, to examine the distressing and difficult issues that are raised when a criminal acts against the mother of an unborn child results in the death of that child. Many people and organisations, including Ms Shields, wrote submissions to the Finlay review. Ms Shields wrote a poignant and articulate submission to the review, which included these words:

Laws are man made and therefore can be changed to correspond with today's day and age. Unborn children should be acknowledged in our society, an amendment to the current legislation might lessen the constant tension someone experiences with this kind of incident and maybe make the incomprehensible a little easier to handle.

In the meantime another tragic case came before the courts, that of Kylie Flick, who lost her unborn child as the result of an assault by Phillip King, the father of her child. The King case proceeded through the courts and resulted in the Court of Criminal Appeal finding, in December 2003, that the close physical connection between a pregnant woman and her unborn child means that the loss of that child can constitute grievous bodily harm to the pregnant woman, even in the absence of other injury to her. It was in some senses a historic finding that ultimately, in December 2004, saw King receive a sentence of 12 years imprisonment with a non-parole period of 8 years. It is clear that the King case has changed the legal landscape with regard to the death of an unborn child that results from a criminal act against a pregnant woman.

As mentioned, the King decision recognises the close physical bond between a pregnant woman and her unborn child. And it is that bond that means the loss of the unborn child can amount to grievous bodily harm to a pregnant woman—even where the woman suffers no other injury. Currently section 4 of the Crimes Act provides a non-exhaustive definition of grievous bodily harm to include any permanent or serious disfiguring of the person. The bill amends this definition to provide that grievous bodily harm can also include the destruction—other than in the course of a medical procedure—of the foetus of a pregnant woman, whether or not the woman suffers any other harm. Accordingly, the amendment codifies the principles enunciated by the Court of Criminal Appeal in the King case, that the definition of grievous bodily harm in the Crimes Act includes the loss of an unborn child.

The amendment is the result of extensive consultations with all stakeholders and careful consideration of their opinions and suggestions. This amendment means that a range of Crimes Act offences, from the malicious infliction of grievous bodily harm with intent, which carries a maximum penalty of 25 years imprisonment, to causing grievous bodily harm by an unlawful or negligent act, which carries a maximum penalty of two years imprisonment, will be covered. Criminal acts involving driving, such as that which claimed the life of Ms Shields' unborn son, will also be covered. It is a significant amendment that allows a range of offences to be charged and a range of penalties applied, according to the subjective elements of each case.

In that respect the amendment recognises that not all cases will involve the same factual scenario or even the same level of criminality but that, nonetheless, all offenders will be held responsible. The amendment codifies the common law of grievous bodily harm without impacting upon or interfering with the law governing other areas. Foremost of these is the law relating to abortion. It has never been and is not now the Government's intention that this amendment should affect the present law with respect to the lawful termination of pregnancy. And this bill does not affect that law.

Nor is it the Government's intention that doctors or nurses, or indeed any medical personnel performing a medical procedure that involves or results in foetal death—whether that procedure be a dilation and curette carried out after a woman has suffered a miscarriage or the removal of a cancerous tumour in the uterus or emergency surgery to save a woman's life—should find themselves open to a criminal charge. For abundant caution, we have therefore exempted medical procedures from the amendment. This bill, which will commence on assent, recognises the grievous harm that young women like Renee Shields and Kylie Flick have suffered; it recognises their unborn children, and it recognises that those who are criminally responsible for the loss of those unborn children should not go unpunished.

While nothing can ever compensate these young women and their families for the great loss they have suffered, and indeed other women who may lose their unborn children as a result of a criminal act, this amendment will, as Renee Shields hoped, make the "incomprehensible a little easier to handle". I know that all honourable members of the House have been moved by the plight of these young women, by their pain and their trauma, and I am sure that this bill will therefore be welcomed. I commend the bill to the House.

