

CRIMES AMENDMENT (RECKLESS INFLICTION OF HARM) BILL 2012

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Bill introduced on motion by Mr Greg Smith, read a first time and printed.

Second Reading

Mr GREG SMITH (Epping—Attorney General, and Minister for Justice) [4.30 p.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Crimes Amendment (Reckless Infliction of Harm) Bill 2012. In 2007 the former Government made a number of amendments to the Crimes Act to remove the antiquated term "maliciously" from the Act. The term had a tortuous definition that I had to analyse and discuss in my submission to the High Court in *The Queen v Lavender*, and the opportunity was taken by the Government to replace the term with appropriate, modern fault elements for a number of offences. At the time, it was not intended that the operation of the offences themselves would change.

In 2011 one of the offences that had been amended, that of recklessly inflicting grievous bodily harm, was considered by the Court of Criminal Appeal in the case of *R v Blackwell*. Prior to amendment that offence criminalised the malicious infliction of grievous bodily harm. The definition of "maliciously" in the Act did not require an intention by the offender to cause any particular injury, merely an "intent to injure". The Court of Criminal Appeal considered the question of whether the offence as amended now required foresight of grievous bodily harm to establish recklessness, or whether foresight of mere injury remained sufficient.

Justice Beazley, with whom both Justices James and Hall agreed on this point, found that under the Crimes Act as amended, grievous bodily harm was the relevant consequence with respect to recklessness. The court found no basis upon which that term could be read down to mean "some physical injury", since the word "maliciously" and its attendant concepts had disappeared from the statute. Although this was not the apparent intent of the amendments, the court's interpretation of the offence as it currently stands is correct. This interpretation, however, creates a significant gap in the prosecution of offences involving physical harm.

The offence of recklessly inflicting grievous bodily harm was regularly used to prosecute cases that are more serious than assault occasioning actual bodily harm, which carries a maximum penalty of five years imprisonment but which would be difficult to prove as an offence of intentional infliction of grievous bodily harm, which has a maximum of 25 years. A common example of cases formerly prosecuted as the reckless infliction of grievous bodily harm is that of a single punch causing a victim to fall and strike his or her head on the footpath, resulting in serious brain injury. However, the offence's utility as an intermediate

offence has been greatly eroded by the decision in *R v Blackwell*. This is because proving that a person foresaw the possibility of grievous bodily harm is significantly more difficult than proving that they foresaw some injury. The amendments restructure relevant personal injury offences affected by the 2007 amendments so that the appropriate fault element applying prior to 2007 is reinstated.

Turning to the substantive provisions of the bill, item [1] of schedule 1 omits section 35 of the Crimes Act and inserts instead restructured offences of recklessly wounding and inflicting grievous bodily harm. The structure of each offence makes it clear that to be guilty of the offence a person must have caused grievous bodily harm and been reckless as to causing actual bodily harm when they did so. The words "actual bodily harm" have been chosen so as to use consistent terminology with other provisions in the Act. The provisions apply to someone who is reckless as to causing harm to the victim or any other person as this ensures that no-one escapes liability merely because the ultimate victim was not the primary target of the accused's behaviour. This wording is also consistent with the relevant provisions of the Model Criminal Code.

Items [2], [3] and [4] of schedule 1 insert the same structure for the offences of recklessly wounding or inflicting grievous bodily harm on a police officer, other law enforcement officer, school student or member of school staff. Item [5] adjusts the definition of circumstances of special aggravation in the context of breaking and entering offences. As is generally the case with amended offences, the transitional provisions provide that the amended offences will only apply to offences committed on or after the commencement of the amendments. The amendments in the bill restore the intended operation of these offences, and I commend the bill to the House.

Debate adjourned on motion by Mr Paul Lynch and set down as an order of the day for a future day.