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ROAD TRANSPORT AMENDMENT (OBSTRUCTION AND HAZARD SAFETY) BILL 2013

Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Duncan Gay.

Second Reading

The Hon. DUNCAN GAY (Minister for Roads and Ports) [11.15 a.m.]: I move:

That this bill be now read a second time.

The important purpose of this bill is to improve the Road Transport Act 2013 to make it clear that the court is to take into account the presence of obstructions and hazards on a road, such as a broken down or crashed vehicle, when determining whether a person has committed an offence of driving a motor vehicle negligently, furiously, recklessly or at speed or in a manner dangerous to the public. As many would be aware, this amendment is a key action of the Breakdown Safety Strategy, which was developed by the New South Wales Government following the tragic deaths of Miss Sarah Frazer and Mr Geoff Clark on the Hume Highway near Mittagong in February 2012.

Miss Frazer's car had broken down and Mr Clark, a father of four and a tow truck driver, came to her assistance. The crash highlighted the vulnerable position faced by motorists on the roadside and emergency and incident response personnel in the course of their duties. In May 2013 a petition signed by nearly 23,000 members of the community advocating legislative change and other government action to improve breakdown safety was presented to Parliament. I am pleased to introduce this bill not only because I know that it responds to community concerns and has broad public support but importantly because it will improve public awareness of breakdown safety, a road safety issue that has only recently received the attention that it deserves.

Between 2007 and 2011 there were 146 crashes in breakdown lanes and road shoulders across New South Wales, resulting in eight fatalities and 102 injuries. Most of these crashes occurred in high-speed environments and on dual carriageways. Preliminary crash analysis shows that five people, including Sarah and Geoff, were killed in breakdown crashes in 2012. The safety of emergency response personnel, particularly on high-speed roads, has also been raised by the NSW Police Force and other emergency services as an ongoing work health and safety challenge.

The Breakdown Safety Strategy launched by the New South Wales Liberals-Nationals Government in September 2012 is a comprehensive response to this road safety issue. Development of the strategy included input from key stakeholders, including NRMA Motoring and Services, the NSW Police Force and WorkCover NSW. The strategy outlines a range of actions, including improved communications to motorists and the tow truck industry, auditing of the road network and improved visibility of response vehicles.

By December 2012 we launched a glove box guide to breakdown safety. The launch coincided with the busiest holiday period on our roads and was the first of its kind in New South Wales. This guide provides advice to motorists on how to stay safe in the event of a breakdown in a range of environments and when passing or assisting a broken down vehicle. In fact, the brochure and high visibility vests are currently available from our stand at the Royal Easter Show.

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The glove box guide will be distributed by NRMA Roadside Assistance personnel to motorists who break down, as well as through Roads and Maritime Services registries and online. Work has also been undertaken to audit and map shoulder widths on high-speed non-metropolitan highways across the State. This information will soon be made available to incident response personnel to enable the planning and delivery of safer operations. Site-specific changes have also been implemented on the Hume Highway, near the site of the crash that claimed the lives of Sarah Frazer and Geoff Clark, to provide additional shoulder width. Longer-term solutions, including the upgrade of a breakdown bay, are currently being planned.

The introduction of the proposed amendments is the next step in implementing the Breakdown Safety Strategy. The strategy recognises that existing offences of negligent, furious or reckless driving in road transport law can apply to drivers that fail to exercise due caution when passing a broken down or crashed vehicle. However, this was not clearly spelled out in the legislation and was not communicated well to the public. With the introduction

of the consolidated Road Transport Act 2013, the offences of negligent, furious and reckless driving that were previously established by section 42 of the Road Transport (Safety and Traffic Management) Act 1999 will be enacted in section 117 of the consolidated Act. The maximum penalty for the offence of negligent driving occasioning death is \$3,300 and/or 18 months imprisonment. The maximum penalty for driving a motor vehicle furiously, recklessly or at a speed or in a manner dangerous to the public is \$2,200 and/or imprisonment for nine months. Higher penalties will apply for second and subsequent offences.

In determining whether an offence has been committed under section 117, the court is required to consider all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic on the road. The bill will introduce an additional consideration to be taken into account by the court when determining whether an offence has been committed under section 117. The court will be required to consider "any obstructions or hazards on the road" at the time of the alleged offence. This will include a range of obstacles that may be faced by motorists on our roads which warrant additional caution, for example, broken down or crashed vehicles, fallen loads and accident or emergency scenes.

To be clear, the proposed changes will not create a new offence. Due to the current broad definition of section 117 a range of driving behaviours that pose a risk to public safety can be prosecuted under the provisions. The amendments will not impact on the elements of the offences under that section or on the applicable maximum penalties. The court will continue to weigh all the circumstances of the case when assessing whether an offence has occurred. The bill will ensure that the attention of the court is directed to any obstructions and hazards in the road environment such as a breakdown or crash, which may have warranted the exercise of additional caution. The amendments will send a clear message to the community that acting with disregard for the safety of other road users in breakdown, crash or emergency situations is not acceptable and can result in prosecution.

Further consultation has been undertaken with the Department of Attorney General and Justice, the Ministry for Police and Emergency Services and the NSW Police Force in the preparation of these amendments. The legislation is planned to commence on 1 July 2013, consistent with the anticipated commencement of the consolidated Road Transport Act. The community will be advised of the changes through a range of channels as part of the Breakdown Safety Strategy communications plan. In addition to the proposed changes, Transport for NSW has also considered the potential impacts of introducing a road rule to require drivers to slow down in emergency situations. While a similar rule has presented enforcement challenges in other jurisdictions, including South Australia, Transport for NSW will propose that the Australian Road Rules Maintenance Group reconsider whether changes to the Australian road rules would now be appropriate. Achieving national consensus is the preferred approach to changing road rules as it ensures consistency and fairness for motorists.

The New South Wales Government has committed to reducing death and serious injury on our roads. Achieving road safety outcomes is also the shared responsibility of all road users. Acting with due care when in a breakdown situation or when passing other motorists who have broken down or crashed is one simple way that all road users can reduce the risk of a crash. Failure to do so is unacceptable and can constitute an offence. The bill clearly sends that message to the community. This bill and the Breakdown Safety Strategy are perfect examples of how community support, stakeholder input and a commitment of the New South Wales Liberal-Nationals Government can result in genuine action to improve road safety. I thank the Frazer family, the SARAH Group and all members of the community who have advocated action on this issue. I trust members will lend their support to the proposed amendments. I commend the bill to the House.