

CRIMES AMENDMENT (OFF-ROAD FATAL ACCIDENTS) BILL 2015**Second Reading**

Ms GABRIELLE UPTON (Vaucluse—Attorney General) [4.30 p.m.]: I move:

That this bill be now read a second time.

The purpose of the Crimes Amendment (Off-road Fatal Accidents) Bill 2015 is to ensure that police have adequate powers to arrest drivers to collect evidence of intoxication where a motor vehicle accident results in a fatality or a near fatality and where the accident took place off-road. Members of this House will remember the tragic deaths of Eliza Wannan and William Dalton-Brown in a motor vehicle accident on 27 January 2010. The accident occurred in a paddock on private property near Molong. The deaths of Eliza and William are a tragedy for their families and their community. The report of the Deputy State Coroner into their deaths did not make formal recommendations, but highlighted the limitations of the current law where a fatal motor vehicle incident occurs on private property.

The Wannan, Brown and Dalton families have suffered immense grief and loss due to the deaths of these wonderful young people. This Government takes the issues raised by these incidents very seriously. In response to the limitations raised by the Deputy State Coroner in her report, the Government had the current laws reviewed by the Hon. William Windeyer, an eminent former Justice of the Supreme Court of New South Wales. Mr Windeyer was asked to review the offences which apply when a fatality results from a motor vehicle accident on private property and to advise on whether current laws should be reformed.

The review undertaken by Mr Windeyer is a matter that I have been considering closely since being appointed Attorney General in April this year. After receiving the report from Justice Windeyer, I have had several meetings with him to discuss his recommendations. Having undertaken a comprehensive review of the current offences and speaking to key stakeholders and family members—including during my visit to Orange some weeks ago—and considering the laws in other States and Territories, Mr Windeyer concluded, as I have, that no new offence should be created here in New South Wales.

Recently I have continued to be in contact with and, as I said, have met with family members who have been affected by this tragic accident that took place a number of years ago. The circumstances in which these young peoples' deaths occurred are truly sad. To sit and talk with those families was a humbling experience. Their families have suffered the indescribable loss of their young children who had limitless potential and sparkles in their eyes, who were of a similar age to the children of many members of this House. Eliza and William having had their lives—their prospects, their opportunity and their optimism—taken from them in the prime of their youth is a tragedy.

While Mr Windeyer did not recommend the creation of a new offence as part of his review, as noted by the Deputy State Coroner, there are limitations with the existing laws. Currently under the Road Transport Act 2013 police powers to arrest accident participants for alcohol and drug testing following a fatal motor accident are limited to accidents that occur on a "road". In that Act, a reference to a "road" also includes a "road related area". A "road related area" includes areas near roads, such as footpaths or median strips, or areas open to or used by the public, such as a car park. A "road" and "road related area" generally does not include private property. It is not always obvious whether a motor vehicle accident site is on a road or road-related area at the time of a fatal accident. Therefore, it may be unclear whether blood and urine samples can be taken under the Road Transport Act. To remove this uncertainty, the Government is proposing to amend the law.

The amendment bill will change the law so that police will have the power to arrest a driver involved in a fatal or likely to be fatal motor vehicle accident to require drug and alcohol testing, regardless of where that accident occurs—both on a road or road-related area and off-road, including private property. This is a significant improvement to the current system as it removes any issues for police arising from uncertainty about the road status at the site of a motor vehicle incident that has resulted in or is likely to result in a fatality. The change will provide police with the power to arrest drivers involved in a fatality or likely fatality so that samples are able to be collected, which may then be used as evidence if the driver is charged with dangerous driving occasioning death.

Let me be clear to the House that this amendment is a measured approach—after great consideration on my part—that will give police clearer investigative powers in relation to fatal accidents occurring on private property, enabling police to gather crucial evidence without having to turn their mind to whether the accident occurred on a road. This amendment bill does not introduce any new offences or additional powers of entry for police. Similarly, this bill does not change the existing random breath testing or roadside drug testing powers. Those powers will continue to be exercised only on a "road" or "road related area". The amendments in this bill will apply in cases where there is tragic loss of life. This amendment will give police the power to arrest drivers and require samples to be collected from those drivers involved in accidents that result in a fatality, or are likely to result in a fatality, regardless of whether the crash occurs on a road or any other place.

I turn to the details of the bill. Schedule 1 amends the Crimes Act 1900. Items [1] and [2] of schedule 1 make amendments to section 52AA of the Crimes Act 1900 that deals with procedural matters concerning the dangerous driving offences. The amendments will remove the definition of "road" and the term "occurring at a place that is not a road" as these will no longer be required as a result of the related amendments proposed to be made by schedule 2. Schedule 2 amends the Road Transport Act 2013. Item [1] makes a consequential amendment. Item [2] inserts a definition of "accident" and "accident participant" after clause 12 (5) in schedule 3.

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This will remove the existing distinction between on-road and off-road fatal accidents in relation to police powers to arrest a driver for drug and alcohol testing. This is an important amendment that provides greater certainty to police when investigating fatal motor accidents off road. The Government and all members of this House offer our deepest sympathies and condolences and our heartfelt wishes to the families of Eliza Wannan and William Dalton-Brown. I trust that members of this House will lend their support to this important bill.