

**Crimes Amendment (Off-road Fatal Accidents) Bill 2015 (Proof)****Crimes Amendment (Off-road Fatal Accidents) Bill 2015**

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CRIMES AMENDMENT (OFF-ROAD FATAL ACCIDENTS) BILL 2015

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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, Maritime and Freight, and Vice-President of the Executive Council) [11.19 a.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Crimes Amendment (Off-road Fatal Accidents) Bill 2015. The purpose of this bill is to ensure that police have adequate powers to arrest drivers and collect evidence of intoxication relating to alcohol and drugs where a motor vehicle crash results in a fatality, no matter where that crash occurs. Members will remember the tragic deaths of Eliza Wannan and William Dalton-Brown on 27 January 2010. The accident occurred in a paddock on private property near Molong. The report of the Deputy State Coroner into their deaths did not make formal recommendations but in her findings she highlighted the limitations of the current law where a fatal motor vehicle incident occurs on private property.

The Wannan, Dalton and Brown families have endured a terrible tragedy, one that no parent should have to suffer, but they have been determined to ensure changes are made so that, if this ever happens again, another family will not have to experience the uncertainty and disappointment that they have. A clear issue in this matter was the uncertainty for police as to whether the accident occurred on a road or road-related area within the meaning of the Road Transport Act. I directed Transport for NSW to work with other agencies to conduct a full examination of all of the issues arising from the Coroner's inquest and to report to the Government on any legislative changes required.

To assist this process, the former Attorney General appointed retired Justice the Hon. Windeyer to review the existing offences relating to fatal car accidents on private land. Mr Windeyer did not recommend the creation of a new offence for negligent driving on private land causing death. However, to make it clear that motor vehicle drivers on private land can be tested for drugs and alcohol where there is or is likely to be a fatal accident, this bill amends the Road Transport Act and the Crimes Act to enable police to arrest a driver for testing purposes.

Currently under the Road Transport Act 2013, police powers to arrest drivers for alcohol and drug testing following a fatal motor vehicle 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. It generally does not include private property. It is not always obvious whether a crash site is a road or road-related area. This makes it difficult to determine whether blood and urine testing can be required under the Road Transport Act 2013. To remove this ambiguity, the bill provides police with powers 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.

Specifically, schedule 1 amends the Crimes Act 1900. Items [1] and [2] of schedule 1 make amendments to section 52AA of the Crimes Act 1900 which 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" into clause 12 (5) of schedule 3. This will remove the existing distinction between on-road and off-road fatal accidents as it applies to the police power to arrest a driver for drug and alcohol testing.

This is a significant improvement to the current system as it removes any ambiguities 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. It provides 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 that this amendment is a small change, but one with an important outcome: the better collection of evidence to support the prosecution of those who may do the wrong thing behind the wheel of a car.

I note this bill does not change the existing random breath or roadside drug testing powers. Those powers will continue to be exercised only on a "road" or "road-related area". It also does not introduce any new offences or additional powers of entry for police. I thank the local member, Andrew Gee, for his representations on this important issue. The Government and all members of the House again offer our deepest sympathies and condolences to the families of Eliza Wannan and William Dalton-Brown. This is the result of their sincere wish that other families should not have to endure what they have gone through. However, I do not pretend that it addresses all their other concerns. I trust honourable members will lend their support to the bill. I commend the bill to the House.

Debate adjourned on motion by the Hon. Shaoquett Moselmane and set down as an order of the day for a future day.