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STATUTES AMENDMENT (DANGEROUS DRIVING) BILL

Mr PEDERICK (Hammond) (18:27): I rise today to make a contribution in regards to the *Statutes Amendment (Dangerous Driving) Bill 2013*. I note that the Attorney-General introduced this bill in this house on 15 May this year. Basically, the structure of this bill is to amend the *Criminal Law Consolidation Act* and also the *Road Traffic Act*, in regards to the *Criminal Law Consolidation Act 1935*, section 19A—'Causing death or harm by use of vehicle or vessel' and section 19AC—'Dangerous driving to escape police pursuit etc', and in regards to the *Road Traffic Act 1961*, section 46—'Reckless and dangerous driving'.

In instances where charges are made under these acts, the prosecution is currently required to prove that the accused drove in a manner dangerous to the public. The government have put the position that the courts have interpreted the phrase too narrowly, and as such the 'public' is not read to encompass a wide range of persons. What this bill seeks to do is amend the respective sections to widen the definition to include any person.

It is noted that in the 2008 case of R v Palmer, what happened in this case is the accused was charged with causing death by dangerous driving as in section 19A of the *Criminal Law Consolidation Act*, and what was alleged here is that the accused performed dangerous manoeuvres on private property, and the vehicle fell onto its side and crushed a passenger's skull. In regard to the direction by the judge to the jury, the judge directed the jury to return not guilty verdicts for the following reasons:

- the relationship of friendship between the three passengers and the driver negated the view that the passengers were to be regarded as members of the public;
- the activities in question took place on private property and away from any road;
- the accused and his three passengers were all knowingly engaged in a form of skylarking;
- the four willingly got into the vehicle in question together for the purpose of amusing themselves by a particular and somewhat dangerous form of recreational activity directly connected with the driving of the vehicle in tight circles with the steering wheel on full lock and the accelerator applied;

- the activity constituted a danger to all four of them but to nobody else; and also
- in circumstances where it is proper to regard the activity as part of a joint escapade on the part of the accused and the passengers—they being the only persons endangered by the activity—then it was not proper to characterise the passengers as 'the public'.

The judge also commented that the conclusion may have been different had 19A read 'driving in a manner dangerous to any other person' rather than 'a manner dangerous to the public', and this is the nub of this bill in regard to these two acts.

Also, the judge applied the reasoning of the New South Wales Court of Appeal in R v S which had a similar factual scenario. After the Court of Appeal handed down the decision in R vs S, the New South Wales parliament amended its legislation in similar terms to the current bill.

In R v Breuker, the charge was laid when an individual died after either falling or jumping off the back of the accused's vehicle whilst it was moving, landing awkwardly and fracturing their skull. The event occurred on a fenced-off netball court where people were setting up for a ticketed event, but it is noted that members of the public had not started to arrive at that event at that time.

In this case the judge considered the case of R v Palmer and applied the reasoning of the New South Wales Court of Appeal in R v S. They noted Chief Justice Gleeson's comments in R v S that there can be forms of relationship between the accused and the deceased which negate the conclusion that the passenger is to be regarded as a member of the public. In that case, the accused, the passenger and victim were considered to be engaged in skylarking, engaging in a risky activity and a joint escapade and, as such, it was improper to characterise the passengers as 'the public'.

In R v Breuker the judge highlighted that other relationships, on the facts of the case, could negate the deceased from being considered a member of the public. The judge considered that the fact that the deceased got onto the back of the car meant he was no longer a member of the public, stating:

I see no reason in principle why the accused should be in a worse position if the deceased voluntarily and without his agreement puts himself in an inherently dangerous position than if they jointly agreed to that course of action. It is not the presence or otherwise of an agreement between the accused and the deceased which characterises the deceased as a member of the public. It is the characterisation of the relationship that determines the issue.

The trial judge again highlighted that the conclusion may have been different had section 19A been differently worded. In regard to motor sport, section 25 of the *South Australian Motor Sport Act 1984* provides for the non-application of certain laws to areas declared by the responsible minister to be areas for a motorsport event under the motorsport act.

Section 25(1a) provides that respective sections of the *Criminal Law Consolidation Act and the Road Traffic Act,* which are to be amended by the bill, do not apply in relation to 'a vehicle or its driver while the vehicle is being driven in a motor sport event within the declared area and during the declared period for the event'.

The Clipsal 500 (and its predecessor, the Sensational Adelaide 500) is a motorsport event which attracts a declaration under the motorsport act. Since 1999, no other motorsport events, except the 1999 Le Mans, have had the privilege of being conducted within a declared area and as such the provisions of the *Road Traffic Act* and the *Criminal Law Consolidation Act* have applied.

It is to be noted that apart from what other car clubs own land in this state, the Sporting Car Club of South Australia owns and operates the Collingrove Hillclimb in the Barossa Valley and holds races at the Mallala Motor Sport Park, and these are both private venues. What the bill does not do is bring the relevant law onto private property. The three identified offences can already be applied to dangerous driving on private property. The case seeks to avoid the relationship of the parties to affect the application of the charge. The case indicates that it is the relationship between the accused and their actions and the deceased, which is usually why the courts have interpreted the provision narrowly.

With regard to the bill, the effect of it would be to widen the scope of the offence so that it would be likely to apply where an accident occurs on a private motorway, such as the Collingrove Hillclimb, even where the deceased consents to the activity. Whilst any accident is tragic, drivers and others who engage in motor sports actively consent to do so and I believe that one should not be held criminally liable for an adverse outcome where a risk is willingly taken on.

With regard to the bill and actions on private property, what it looks like the bill will do is reduce the individual's personal freedoms. What could happen here is there could be criminal liability imposed where it is not justified. I believe the member for Bragg will probably echo these statements in her contribution, but we in the opposition are certainly committed to road safety and hold that those who flout the law and drive with disregard for the safety of others need to be held to account.

With regard to section 5 of the *Road Traffic Act*, that act applies only to public roads. The bill proposes to widen the class of persons from the public to any person, and it appears that this would widen the offence to capture instances where people decide to engage in dangerous activity on our roads, overcoming the relationship characterisation as previously identified by the courts.

Certainly, with regard to the Sporting Car Club of South Australia, they have raised concerns that the bill will have serious and unintended ramifications on motor sport in South Australia. As I said in my comments earlier, they are concerned that this could place criminal liability on people who are involved in motor sports events, even those which are held on private property.

I want to make some other comments about other recreational venues in my electorate, or very closely neighbouring my electorate. We have four-wheel drive clubs that come down to the electorate. We have motor bike clubs and we have

quad bike clubs that run events. The four-wheel drivers come out to a private property at Peake. The Peake sandhills are quite famous amongst the four-wheel drivers in this state and probably further away. There are also private properties at Geranium that clubs can use for learning their skills in managing four-wheel drive vehicles.

For many people, and this covers a lot of people who reside in urban areas and do not have the opportunity, if they own a four-wheel drive, to use it to its full extent very often, this gives them the opportunity to use those vehicles. There is a property, Bushy Seidel's property near Coonalpyn, it is actually near the Ngarkat national park, where many four-wheel drive clubs and motor bike groups, whether they be two-wheel motor bike groups or quad bike groups, come out for time trials. I must say that, when I get the opportunity, which is not as often as I would like, I take my two young boys out there with our motor bikes and have a bit of fun for a couple of days, combined with some camping.

I acknowledge that I am aware of staffers from Parliament House and previous staffers from Parliament House who have enjoyed activities on the Seidel property near Coonalpyn. I would hate to think that this law will impose any extra criminal liability on people who engage in these events and their recreation. Will it be the simple fact that on this property, which is somewhere close to 30 kilometres off a main road, off the Dukes Highway, the next thing we will see is the police patrolling this private property to see whether they can lay charges as a result of the amendments to these two acts? I would hate to think that would be the case.

It also concerns me how much ingress the police could have on private property. Certainly, we are well aware that we do need to act safely and we do not want to see people getting hurt, whether it is on private property or on our roads. I think there is a fine line of civil liberties in this case and it would be a real shame if passing this legislation impacted on activities that are currently enjoyed in my electorate and, certainly, at other events—sandhill racing events, or buggy racing at Parilla. It would be a shame to see these events curtailed because people are worried about the potential legal outcomes of sports or recreational pursuits that they enjoy.

Also, as I indicated earlier, I am very concerned about any implications it could have for farms. For instance, kids drive motor vehicles on farms from an early age. It is quite a kick, and I did it when I was about 10 years old. When I get the odd opportunity to do a couple of minor jobs on the farm, I send out my two boys with the car and trailer so they can take out some tools because I am taking out a tractor to install a trough, or something. This is in relation to 10-year-old children driving vehicles, and I am certainly concerned about what could happen here if there was a terrible tragedy. I would hate to see it but farm accidents do happen, sadly. Apart from families having to put up with a terrible tragedy if something did happen where a couple of, usually, young siblings had an accident, they may have to put up with the extra duress of one of those siblings being charged with a death by dangerous driving charge.

There is a lot I would like to hear from the Attorney in relation to these questions and, certainly, I echo the points made by the member for Chaffey with regard to river traffic, with my electorate covering most of the bottom end of the river. What would

be the position there if this bill becomes law? I urge the Attorney to appease my concerns and, if it is put into place as a law, I hope it can be done in a proper way so that we do not impinge heavily on people's civil liberties and their rights to operate their farms and to have their recreational pursuits.

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