



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: RBGMM1303224
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11 March 2010

The Hon. Michael Daley, MP
Minister for Police
Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister,

Crimes Amendment (Police Pursuits) Bill 2010

I refer to the above Bill which creates a new indictable offence of failing to stop a vehicle and driving the vehicle recklessly, or in a manner dangerous to others after becoming aware that police officers are in pursuit of the vehicle. The maximum penalty for this offence is three years imprisonment for the first offence and five years imprisonment for the second or subsequent offence. The new offence also introduces automatic driver licence disqualification periods of three years for a first offence and five years for second or subsequent offences.

The Law Society's Criminal Law Committee and Juvenile Justice Committee (Committees) have serious concerns in relation to the Bill. The Committees understand that the legislation has been introduced in response to a number of specific police pursuit incidents and in particular the death of Skye Sassine. Skye's death was tragic, however legislation based on particular case outcomes is rarely if ever necessary, justified or appropriate.

The circumstances of this particular case appear to be within the scope of the offence of dangerous driving causing death under section 52A of the *Crimes Act 1900*. This offence carries a maximum penalty of 10 years imprisonment, and 14 years imprisonment if committed in circumstances of aggravation. There are numerous related driving offences in the *Road Transport (Safety and Traffic Management) Act 1999*.

The Committees are of the view that the penalties for the new offence are excessive. The Committees note that the offence of negligent driving occasioning death carries a maximum sentence of 18 months imprisonment, and the offence of negligent driving where grievous bodily harm is occasioned provides for a maximum sentence of nine months imprisonment (section 42(1)(a) and (b) *Road Transport (Safety and Management) Act 1999*). The proposed penalties of three and five year sentences for an offence where no one is injured or killed, are excessive and disproportionate to the gravity of the offence.

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The mandatory licence disqualification periods for the new offence, of three years for a first offence and five years for second or subsequent offences, do not allow for gradations of seriousness within the offence. The Committees suggest that there should be a maximum statutory disqualification period (e.g. three years) and a minimum disqualification period (e.g. 12 months) to allow for a range of penalties depending on the culpability of the offender and the individual circumstances of the offence.

The Committees note that the NSW Police Force reviewed and revised its Safe Driving Policy in 2007-2008 following a review by the Ombudsman of compliance with the existing policy in the context of police pursuits. A key feature of the revised policy is that pursuits are to be considered as a last resort. The Committees urge the Government to put resources into further police education to increase awareness of the police pursuit policy, and to enable regular reviews as to the adequacy and implementation of the policy.

Yours sincerely,


Mary Macken
President