




Speech By  
**David Janetzki**

**MEMBER FOR TOOWOOMBA SOUTH**

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Record of Proceedings, 13 June 2018

**HEAVY VEHICLE NATIONAL LAW AND OTHER LEGISLATION AMENDMENT  
BILL**

 **Mr JANETZKI** (Toowoomba South—LNP) (3.50 pm): I rise to make a contribution to the debate of the Heavy Vehicle National Law and Other Legislation Amendment Bill 2018. As my colleagues have, I will be offering my support to the bill; however, I will be speaking to provisions relating to particular offences and how they interrelate between TORUM and the Criminal Code.

Before I turn to those provisions, I want to remind members why we are here today talking about them. The community campaign which the member for Burnett spoke about and which the member for Burdekin and the shadow minister alluded to has been going on for a number of years. I trace it back to the very sad death of Mrs Audrey Dow in the electorate of Whitsunday. She was killed on 31 July 2013 in Mackay. In that particular instance the driver, Mr Kite, was showing a lack of care and attention, distracted by a mobile phone, and hit Mrs Dow's vehicle, causing her death. Mrs Dow's daughter, Angela Meiklejohn, met with the then shadow attorney-general, the former member for Mansfield, in relation to these matters. The LNP offered its support immediately following the coroner's report into Mrs Dow's untimely death. It took the Attorney-General's department eight months to reply and it has taken a further 2½ years for us to debate these laws today. Since the death of Mrs Dow there have been too many deaths not given the full weight of potential offences at law. It is time that this legislation was debated.

The member for Burnett spoke about the Walker family and the Mabley family. It is worth reminding ourselves that the driver in that case, Mr Gayler, pleaded guilty to driving without due care and attention, was fined \$3,000 and had his licence suspended for three months. The case I want to personally reflect on—I have met and spent a considerable amount of time with the father—is the case of Yasmin McAllister. Her father, Glynn Harnell, made a submission to the committee. A common theme amongst all family members was a deep feeling of injustice. While they were saying goodbye to their loved ones, the people who had perpetrated these crimes were walking out with a suspended sentence, no sentence or perhaps just a fine. There are deep emotions to this. I think the member for Burdekin picked up on that quite clearly as well.

One year ago tomorrow, Yasmin McAllister was killed at Camp Hill by a driver, Mr Tiwari, who had failed to show due care and attention and hit another vehicle, which subsequently hit Yasmin McAllister. She suffered seven head fractures and passed away. The driver pleaded guilty to driving without due care and attention and was given a three-month sentence, which was wholly suspended. The magistrate in that case said that it was at the extreme end of the due care and attention provisions under the TORUM Act and that the offender 'took a punt'. As I said, that offender was given a sentence of three months imprisonment wholly suspended and lost his licence for six months. This is where we are coming from today—a deep groundswell of concern amongst families.

I am deeply concerned about the lack of due care and attention that is shown on our roads. To see this you only have to stop at a set of traffic lights and observe people in other cars who are checking their mobile phones. While we may be debating these laws today, I am hoping that the minister is

developing some strategy to improve road safety in this regard. It is of grave concern to me when I look across traffic at traffic lights and I see many people with their heads down, clearly using their mobile phones and not showing due care and attention as they ought.

I turn to the amendments. The minister spoke about essentially the doubling of the penalties associated with the existing offences. There is an additional circumstance in that if the driver was disqualified then there would be a further doubling. The penalty is proposed to increase from six months imprisonment and a fine of roughly \$5,000 to a fine of \$10,000 and two years imprisonment. Those penalties would be doubled if there was a circumstance that the driver who caused death or grievous bodily harm was disqualified from driving.

My question, as has been articulated by a number of speakers on this side of the House, is: is there a case for a mid-tier offence to be introduced? If it was good enough for New South Wales to have a mid-tier offence of negligence, what is the advice that the minister has received that prevents Queensland from considering a similar outcome? If New South Wales has a mid-tier offence of negligence, why is it not good enough for Queensland to consider that?

I turn to the coroner's report in relation to the death of Mrs Dow. The coroner said in his report—

It was pointed out to me—  
by counsel assisting—

that any mid-range offence dealing as it does, with causing death, would best be contained within the Criminal Code, so it is under the responsibility of the Minister for Justice and Attorney-General—

this is the key point for me—

and can sit as an alternate charge for a jury to consider whenever the prosecution proceeds with a charge of dangerous driving. This is a very sensible, and wise, observation.

The minister spoke in relation to the independent legal advice he had received. I am not sure whether it is possible to circulate that legal advice in respect of whether consideration was given to a mid-tier offence being included in the Criminal Code for the reasons that the coroner recommended or to give a jury an alternative charge if a dangerous driving charge was brought under the Criminal Code. I would be intrigued to understand whether advice was sought in relation to the New South Wales mid-tier negligence offence and why it was not adopted in Queensland.

While this is a step in the right direction, I believe that some families will still be concerned that it does not send a strong enough message, particularly given that it is not in the Criminal Code. From observing road users generally, I hold a deep concern that people who drive without due care and attention are weaponising their vehicles. It is that simple. To understand this you need only see the heartache of the families we have discussed—the Walkers, the Mableys, the Harnells, the Meiklejohns and the Dows—who have lost their family members. People who drive without due care and attention are weaponising their vehicles. I believe that a strong message needs to be sent. As these provisions are not in the Criminal Code I am not sure the message is strong enough, but I accept what the minister said earlier today.

I was deeply moved by my meeting with Mr Harnell. As I said, one year ago tomorrow his daughter was killed in an accident. He has given me permission to read from his victim impact statement, which he read before the magistrate at Holland Park Magistrates Court. He said—

More so than the disappointment in certain Police is my massive sense of the failure of the State government in bringing in appropriate laws. They have ignored or not given sufficient import to the Coroner's Findings of Inquest dated 6th of March, 2015 into the death of Audrey Anne DOW ...

He continued—

I know I am not the only father to lose a child, I am not the first and I won't be the last. But today I am an angry father, angrier than I have ever been at this negligent driver who has deprived me of the company of my only beloved daughter, who has deprived me of her always cheery 'heyyyy Daaad' when we met, deprived me of the pleasure of future grandchildren which were planned for 2018, deprived hundreds of people of her megawatt smile which would literally light up a room when she entered, indeed deprived society of the undoubted contribution she would have made through her work and through her love for humanity.