

ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2021 AND
ROAD TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT)
AMENDMENT BILL 2021 (No 2)

STANDING COMMITTEE ON PLANNING, TRANSPORT AND CITY SERVICES

NOVEMBER 2021

REPORT 7

THE COMMITTEE

COMMITTEE MEMBERSHIP

Jo Clay MLA	(Chair)
Suzanne Orr MLA	(Deputy Chair)
Mark Parton MLA	

SECRETARIAT

Dr David Monk	Senior Director, Committee Support
Ms Janice Rafferty	Acting Secretary
Ms Joanne Cullen	Acting Secretary
Dr Brian Lloyd	Secretary (to 26 August 2021)
Ms Lydia Chung	Administrative Assistant
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RESOLUTION OF APPOINTMENT

On 2 December 2020 the Legislative Assembly resolved to establish the Standing Committee on Planning, Transport, and City Services.¹

Under the Resolution the Committee is responsible for examining the following areas:

- City Renewal Authority;
- Suburban Land Agency;
- Planning and Land Management;
- Transport;
- City Services including waste and recycling;
- Housing (excluding service provision); and
- Building and Construction.²

TERMS OF REFERENCE

Under the Assembly's Standing Committees Resolution of Appointment of 2 December 2020, 'all bills presented to the Assembly stand referred to the relevant standing Committee for inquiry and report within two months from the presentation of the bill'.³ Terms of Reference for this inquiry are for the Committee to inquire into and report on the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2)⁴ and the Road Transport Legislation Amendment Bill 2021.⁵

¹ Legislative Assembly for the ACT, *Minutes of Proceedings No 2*, 2 December 2020, pp 17, 20, available at: https://www.parliament.act.gov.au/data/assets/pdf_file/0007/1669030/MoP002F.pdf

² Legislative Assembly for the ACT, *Minutes of Proceedings No 2*, 2 December 2020, pp 17, 20, available at: https://www.parliament.act.gov.au/data/assets/pdf_file/0007/1669030/MoP002F.pdf

³ Legislative Assembly for the ACT, *Minutes of Proceedings No 2*, 2 December 2020, p 17, (as amended 11 February 2021, 30 March 2021, 22 April 2021, 16 Sept 2021 and 9 Nov 2021) available at: https://www.parliament.act.gov.au/_data/assets/pdf_file/0007/1669030/MoP002F3.pdf

⁴ Presentation of the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2), Legislative Assembly for the ACT, *Minutes of Proceedings*, 22 June 2021, p 209, available at: https://www.parliament.act.gov.au/_data/assets/pdf_file/0019/1780102/MoP018F8.pdf

⁵ Presentation of the Road Transport Legislation Amendment Bill 2021, Legislative Assembly for the ACT, *Minutes of Proceedings No 23*, 5 August 2021, p 260, available at: https://www.parliament.act.gov.au/_data/assets/pdf_file/0020/1815410/MoP023F2.pdf

ACRONYMS

ABH	Actual Bodily Harm
ACT	Australian Capital Territory
AFPA	Australian Federal Police Association
ALRC	Australian Law Reform Commission
ANZ	Australia New Zealand
CEO	Chief Executive Officer
HRA	<i>Human Rights Act 2004</i>
JACS	Justice and Community Safety
MLA	Member of the Legislative Assembly
PMB	Private Members' Bill
TCCSD	Transport Canberra and City Services Directorate
TIN	Traffic Infringement Notice
WCCC	Weston Creek Community Council

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RECOMMENDATIONS

RECOMMENDATION 1

- 8.14 The Committee recommends that the Road Transport Legislation Amendment Bill 2021 be passed by the Assembly.

RECOMMENDATION 2

- 8.15 The Committee recommends that the following matters regarding the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2) be addressed including:
- the application of Strict Liability Offences to offences which under the current drafting have a level of subjectivity in their application and noting it is unusual for TIN's to apply to an offence where subjectivity is required;
 - a clearer definition of harm which takes into account current common law definitions of harm and that considers the scope of what is reasonable to assess at the time of an offence and that as drafted a TIN may be issued before all harm can be adequately assessed;
 - greater consideration to how fault and negligence will be determined under the bill noting the amendment as drafted departs from current practice for determining fault and negligence for offences that cause harm through the court system where legal fairness can be better applied;
 - reconsideration of 5D (1) (b) to acknowledge that harm to vulnerable road users is not only caused by motor vehicles as currently defined in the Bill;
 - demonstrating consistency with other offences and how the penalties as drafted will be consistent with principles underpinning the offence hierarchy;
 - balancing the penalties for all road users in line with the *Human Rights ACT 2004*; and
 - clarification of the commencement date for the provisions of the Bill.

RECOMMENDATION 3

- 8.16 The Committee recommends that the ACT Government develop an education campaign about the safety of Vulnerable Road Users.

RECOMMENDATION 4

- 8.17 The Committee recommends that the ACT Government provide more dedicated infrastructure for Vulnerable Road Users.

1 BACKGROUND

- 1.1 The Chair of the Committee, Jo Clay MLA, presented the [Road Transport \(Safety and Traffic Management\) Amendment Bill 2021 \(No 2\)](#) in the Assembly on 22 June 2021.⁶ On 1 July 2021 the Committee resolved to inquire into the Bill.
- 1.2 The Minister for Transport and City Services, Chris Steel MLA, presented the [Road Transport Legislation Amendment Bill 2021](#) in the Assembly on 5 August 2021.⁷ On 12 August 2021 the Committee resolved to inquire into the Bill cognately with the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2).
- 1.3 Under the Assembly's Standing Committees Resolution of Appointment of 2 December 2020, 'all bills presented to the Assembly stand referred to the relevant standing Committee for inquiry and report within two months from the presentation of the bill'.⁸
- 1.4 The Committee's Terms of Reference for this inquiry into the [Road Transport \(Safety and Traffic Management\) Amendment Bill 2021 \(No 2\)](#) and [Road Transport Legislation Amendment Bill 2021](#) are to inquire into and report on the Bill.
- 1.5 The Assembly passed a motion on 16 September 2021—That the resolution of the Assembly of 5 August 2021 which altered the reporting date for the Standing Committee on Planning, Transport and City Services' inquiry into the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2), be amended by including the Road Transport Legislation Amendment Bill 2021 in the inquiry and the Committee to report to the Assembly by 30 November 2021.⁹

⁶ Legislative Assembly for the ACT, *Minutes of Proceedings No 18*, 22 June 2021, p 209, available at: https://www.parliament.act.gov.au/_data/assets/pdf_file/0019/1780102/MoP018F8.pdf

⁷ Legislative Assembly for the ACT, *Minutes of Proceedings No 23*, 5 August 2021, p 260, available at: https://www.parliament.act.gov.au/_data/assets/pdf_file/0020/1815410/MoP023F2.pdf

⁸ Legislative Assembly for the ACT, *Minutes of Proceedings No 2*, 2 December 2020, p 17, (as amended 11 February 2021, 30 March 2021, 22 April 2021, 16 Sept 2021 and 9 Nov 2021) available at: https://www.parliament.act.gov.au/_data/assets/pdf_file/0007/1669030/MoP002F3.pdf

⁹ Legislative Assembly for the ACT, *Minutes of Proceedings No 24*, 16 September 2021, p 273, available at: https://www.parliament.act.gov.au/_data/assets/pdf_file/0008/1854476/MoP024.pdf

CONDUCT OF THE INQUIRY

- 1.6 The Committee issued a call for submissions on 1 July 2021, which initially closed on 23 July 2021 and later extended this call for submissions to 30 July 2021, 42 submissions were received by the Committee.
- 1.7 On 29 July 2021 the Committee agreed that because the Chair of the Committee, Jo Clay MLA, had presented the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2) to the Assembly, the Deputy-Chair of the Committee, Suzanne Orr MLA, would be Acting Chair for the inquiry.
- 1.8 The Committee issued a second call for submissions on 17 September 2021 for both bills, which closed on 16 October 2021. A further four submissions were received by the Committee.
- 1.9 A total of 46 submissions were received, a list of all these is provided at Appendix A.
- 1.10 The Committee held a public hearing and heard from 14 witnesses. A list of witnesses who appeared before the Committee is provided at Appendix B. The transcripts of proceedings are accessible at https://www.hansard.act.gov.au/hansard/2021/comms/default.htm#6_ptcs.

2 ROAD TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT) AMENDMENT BILL 2021 (No 2)

DESCRIPTION OF THE BILL

- 2.1 The Bill consists of six clauses and an amendment to Schedule 1 of the *Road Transport (Offences) Regulation 2005*.
- Clause 1 is the name of the Act;
 - Clause 2 states the proposed day of commencement;
 - Clause 3 indicates the legislation to be amended;
 - Clause 4 would amend a note to Section 5AA of the *Road Transport (Safety and Traffic Management) Act 1999*; relating to the Criminal Code;
 - Clause 5 proposes to insert a new section 5D into the *Road Transport (Safety and Traffic Management) Act 1999*, setting out a new offence of causing harm to a Vulnerable Road User by driving negligently; and
 - Clause 6 proposes to relocate the current definition of 'Vulnerable Road User' to the Dictionary of the *Road Transport (Safety and Traffic Management) Act 1999* so that it applies to both the current Section 7A and the proposed Section 5D.
- 2.2 The proposed amendment to Schedule 1 of the *Road Transport (Offences) Regulation 2005* contained in Clause 1.1 of the Bill provides for a traffic infringement notice for the offence, under which the penalty is \$1600 plus 3 demerit points.¹⁰

EXPLANATORY STATEMENT

- 2.3 The Explanatory Statement (the Statement) to the Bill states that:
- the Bill's purpose is 'to improve road safety and, where Vulnerable Road Users (people outside of a car) are harmed, to bring penalties closer to meeting community expectations';

¹⁰ Explanatory Statement, Road Transport (Safety and Traffic Management) Amendment Bill 2021 2021 (No 2), pp 5–6.

- the Bill would introduce ‘a new offence for negligent driving that causes harm to a Vulnerable Road User with a maximum penalty of 50 penalty units’, and ‘a traffic infringement notice penalty for this offence of \$1600 plus the loss of three licence points’; and
 - the Bill aimed to ‘address conduct that has inflicted actual harm to a person’, ‘in response to frequent reports where Vulnerable Road Users suffer injuries and the driver involved receives either no penalty or a traffic infringement notice involving a \$393 fine and three demerit points’.¹¹
- 2.4 The Statement said that any road collision that involved a Vulnerable Road User was ‘much more likely to lead to serious injury or death’. This was borne out by 2019 data on traffic fatalities, which indicated that ‘13.4% of road fatalities were pedestrians, 17.7% were motorbike riders and 3.3% were bike riders’. ‘Almost half’ of serious injuries and ‘more than one-third’ of fatalities were suffered by Vulnerable Road Users, who experienced serious injury and death at a disproportionately high rate compared with other road users.¹²
- 2.5 The Statement noted that consultation had shown that ‘applying no penalty or applying a low penalty’ where negligent driving had injured another person did not suffice to meet community expectations.¹³ A recent example which illustrated these problems was a ‘high-profile case’ which occurred in October 2020 on William Hovel Drive when a car driver towing a trailer ‘knocked a person off their bike’. The person was treated by paramedics at the scene and taken to hospital, and dashcam footage ‘clearly showed the collision’.¹⁴
- 2.6 Public comments in response to the accident on William Hovell Drive were that “the driver was in charge of a ‘lethal weapon’ and that the incident was ‘negligent or even malice’, ‘attempted manslaughter’, ‘aggravated assault’ or ‘vehicular homicide/violence’”. The driver received a \$393 fine and the loss of three demerit points, leading to comments that in the ACT it was possible to ‘nearly kill a bike rider riding lawfully on our roads’ and yet receive ‘a relatively light fine’.¹⁵
- 2.7 The Statement indicated lower- and higher-tier offences defined by the [Road Transport \(Safety and Traffic Management\) Act 1999](#), and proposed this Bill as providing ‘a reasonable mid-tier offence to address and reduce real harm’.¹⁶

¹¹ Explanatory Statement, Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2), p 1.

¹² Explanatory Statement, Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2), p 1.

¹³ Explanatory Statement, Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2), p 1.

¹⁴ Explanatory Statement, Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2), p 2.

¹⁵ Explanatory Statement, Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2), p 2.

¹⁶ Explanatory Statement, Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2), p 2.

- 2.8 The Statement considered low-tier offences, noting Section 6(1)(c) of the Act, which prohibited ‘negligent driving that falls short of causing death or grievous bodily harm’, and provided a penalty up to a maximum of 20 penalty units.¹⁷ This was consistent with other existing offences attracting up to 20 penalty units which did not require proof of harm to a person, including as performing burnouts or handbrake turns (s 5B), negligent driving without causing harm (s 6(1)(c)), using speed camera avoidance devices (s 9), or driving on roads that were temporarily closed (s 30). For comparison, the Statement noted that the offence of using a mobile phone when driving attracted a fine of between \$480 and \$589.¹⁸
- 2.9 According to the Statement, 20 penalty units or a low fine were not appropriate where a victim had been harmed, and even less so when the person was a Vulnerable Road User. Low penalties were ‘not in line with community expectations’, were not a deterrent, and were not likely ‘to support our road safety culture or to reinforce the fact that motorised road users must take care of Vulnerable Road Users’.¹⁹
- 2.10 Regarding high-tier penalties, the Statement said that existing sections 6(1)(a) and (b) of the [Road Transport \(Safety and Traffic Management\) Act 1999](#) prohibited negligent driving causing death or grievous bodily harm, applying a maximum penalty of 100 to 200 penalty units or imprisonment or both. However, it said, these offences would not apply ‘in the majority of non-fatal collisions that occur’, as most accidents involving injuries to pedestrians or cyclists did not involve grievous bodily harm or death. While the consequences could be significant, severe, long-term and sometimes lifelong, circumstances for these accidents typically fell short of the threshold for grievous bodily harm.²⁰
- 2.11 Similarly, existing sections 7 and 8 of the Act defined offences of prohibited furious, reckless or dangerous driving and menacing driving, to a maximum penalty of 100 to 300 penalty units or imprisonment or both. Again, these offences involved a high threshold of culpability for the driver, and were not appropriate in ‘the majority of non-fatal collisions’ where a driver was driving negligently without due care. It was appropriate that existing high-tier offences with a ‘high degree of intentionality’ required significant evidentiary proof, but it was a different matter for mid-tier offences, such as that proposed, where ‘most elements of the offence [were] clearly defined’.²¹

¹⁷ Under the *Legislation Act 2001*, Section 133 (2) a penalty unit for an offence committed by an individual is equivalent to \$160.00, and a penalty unit for an offence committed by a corporation is equivalent to \$810.00. Section 133(1) provides that in a law ‘if a penalty for an offence is expressed as a number (whether whole or fractional) of penalty units, the penalty for the offence is a fine of that number of penalty units’: that is, penalties expressed as penalty units only result in fines, not their equivalent in custodial sentences, unless the person objects to the fine and goes to court, where the penalty units would apply.

¹⁸ Under Schedule 1 of the *Road Transport (Road Rules) Regulation 2017*.

¹⁹ Explanatory Statement, Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2), p 2.

²⁰ Explanatory Statement, Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2), p 2.

²¹ Explanatory Statement, Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2), p 3.

- 2.12 According to the Statement, the Bill sought to cover the ‘mid-tier gap’. It said that most road incidents involving Vulnerable Road Users were in this tier, where the pedestrian or cyclist was not killed but were harmed, and harm and conduct were clear. The Bill would provide a traffic infringement notice to for police to apply in situations where harm had occurred, the conduct was clear, and a higher penalty warranted, but imprisonment and a requirement for full criminal prosecution were not.²²

PENALTY UNITS

- 2.13 As noted, the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2) would provide for a penalty of up to 50 penalty units for a new offence of negligent driving that causes harm to a Vulnerable Road User, and the loss of three licence demerit points.²³
- 2.14 The [Legislation Act 2001](#) defines the value of penalty units, currently at \$160 per penalty unit for an offence committed by an individual and \$810 for an offence committed by a corporation.²⁴
- 2.15 On this basis, the maximum penalty in penalty units for an individual committing an offence under proposed section 5D, ‘Negligent driving—harm to vulnerable road user’, would be \$8,000. The maximum penalty in penalty units for a corporation would be \$40,500, although the Bill does not say whether, and when, a corporation could be liable, this is set out in the Criminal Code part 2.5.

PRESENTATION

- 2.16 In presenting the Bill, Jo Clay MLA said that for the most part ‘our roads are getting safer’, but that road safety was not improving for everyone. While road safety for motorists was improving, it was lagging for Vulnerable Road Users. In Australia more cyclists died on roads in 2020 than in 2010, and almost half of serious road injuries and more than one-third of road deaths were suffered by Vulnerable Road Users.²⁵

²² Explanatory Statement, Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2), p 3.

²³ Explanatory Statement, Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2), p 1.

²⁴ *Legislation Act 2001*, Section 133(2). As noted above, Section 133(1) provides that in a law ‘if a penalty for an offence is expressed as a number (whether whole or fractional) of penalty units, the penalty for the offence is a fine of that number of penalty units’: that is, penalties expressed as penalty units only result in fines, not their equivalent in custodial sentences.

²⁵ Ms Jo Clay MLA, *Legislative Assembly Debates*, 22 June 2021, p.1867.

- 2.17 Ms Clay told the Assembly that on 3 October 2020 there had been a very serious collision in Belconnen, in which a car towing a trailer knocked a cyclist off their bike, and the victim was left with lifetime injuries. She said that it took months for a penalty to be issued, ‘despite dash cam footage clearly showing that the driver was at fault’, and that the driver received a \$393 fine. This, a ‘fine of \$393 for driving negligently and seriously harming another human being’, she told the Assembly, did not meet community expectations, sent a bad message to drivers, indicated to Vulnerable Road Users that their lives were worth less than other people’s, and discouraged those who might otherwise take up active travel. The effect was to reinforce an ‘ingrained habit’ of driving a car even where alternatives were practicable.²⁶
- 2.18 Ms Clay told the Assembly that her proposed new offence was ‘a middle ground between some of the existing offences’. Currently there is the offence of negligent driving, for which the penalty was low at a maximum of 20 penalty units or a \$393 fine, which was possibly acceptable when no-one was hurt, but fell short when someone had been seriously injured. At the other end of the scale were high-level offences for where negligent driving caused grievous bodily harm or death. While serious penalties were provided for these offences, most accidents fell short of grievous bodily harm or death, but that did not mean that ‘most accidents should be accepted’. If active travel were to be encouraged, it was important to ‘create a culture of care on our roads’.²⁷

²⁶ Ms Jo Clay MLA, *Legislative Assembly Debates*, 22 June 2021, p 1868.

²⁷ Ms Jo Clay MLA, *Legislative Assembly Debates*, 22 June 2021, pp 1869-1870.

3 ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2021

DESCRIPTION OF THE BILL

3.1 The Bill consists of ten clauses and amendments to Schedule 1 of both the [Motor Accident Injuries Act 2019](#) and [Road Transport \(Offences\) Regulation 2005](#).

- Part 1:
 - Clause 1 is the name of the Act;
 - Clause 2 states the proposed day of commencement; and
 - Clause 3 indicates the legislation to be amended.
- Part 2:
 - Clause 4 would amend the [Road Transport \(General\) Act 1999](#), to increase the minimum automatic disqualification period for first and repeat offenders;
 - Clause 5 would insert a proposed new section 63 (2A) into the [Road Transport \(General\) Act 1999](#), to establish a new minimum automatic disqualification period if a court convicts, or finds guilty, a person of an offence of negligent driving occasioning death or negligent driving occasioning grievous bodily harm; and
 - Clause 6 proposes a minor and technical amendment consequential on changes at Clause 5.
- Part 3:
 - Clause 7 would insert a proposed new section 244K into the [Road Transport \(Road Rules\) Regulation 2017](#), relating to the use of personal mobility devices; and
 - Clause 8 would insert a proposed new section 304A into the [Road Transport \(Road Rules\) Regulation 2017](#), introducing a new provision relating to the use of a personal mobility device, bicycle or animal-drawn vehicle while under the influence of alcohol or a drug.
- Part 4:
 - Clause 9 would amend the [Road Transport \(Safety and Traffic Management\) Act 1999](#) by introducing a new offence for negligent driving occasioning actual bodily harm; and
 - Clause 10 proposes minor and technical amendment consequential on the introduction of the [Road Transport Legislation Amendment Regulation 2019 \(No 1\)](#).

- 3.2 The proposed amendment to Schedule 1 of the *Motor Accident Injuries Act 2019* contained in Clause 1.1 is a minor and technical amendment consequential on changes at Clause 9.²⁸
- 3.3 The proposed amendment to Schedule 1 of the *Road Transport (Offences) Regulation 2005* contained in Clause 1.2-1.4 provides for the offences:
- negligent driving occasioning death—200 penalty units/2 years prison or both;
 - negligent driving occasioning grievous bodily harm—100 penalty units/1 year prison or both;
 - negligent driving occasioning actual bodily harm—50 penalty units/6 months prison or both;
 - negligent driving—20 penalty units/traffic infringement notice of \$598 plus 3 demerit points;
 - person on personal mobility device without proper control—20 penalty units/traffic infringement notice of \$154; and
 - not comply with direction of police officer to get off, or not get on, vehicle or animal—20 penalty units/traffic infringement notice of \$154.²⁹

EXPLANATORY STATEMENT

- 3.4 The Explanatory Statement (the Statement) to the Bill states that:
- the Bill's purpose was 'to improve road safety by strengthening the Territory's regulatory and enforcement framework for dangerous driving and other unsafe behaviours on the Territory's road network';
 - the Bill:
 - establishes a new offence for negligent driving that occasions actual bodily harm, and two new offences for unsafe behaviours of other transport modes; and
 - increases minimum automatic licensing disqualification periods for the offences of culpable driving and negligent driving; and
 - the Bill provides for 'the administration and enforcement of the road transport legislation and includes automatic licence disqualification periods that must be applied by the Court following conviction or finding of guilt for some road transport offences'.³⁰

²⁸ Explanatory Statement, Road Transport Legislation Amendment Bill 2021, pp 15–19.

²⁹ Road Transport Legislation Amendment Bill 2021, pp 9–10.

³⁰ Explanatory Statement, Road Transport Legislation Amendment Bill 2021, p 1.

- 3.5 The Statement states that consultation had been undertaken with key Government stakeholders, however no public consultation on the bill has occurred. It also noted that a communications strategy will be developed to support the introduction of the new offences in this Bill.³¹
- 3.6 The Explanatory Statement notes that some provisions of the Bill do raise questions under the provisions of Section 28 of the [Human Rights Act 2004](#) (HRA) however the ‘limitations on human rights in the Bill are proportionate and justified in the circumstances because they are the least restrictive means available to achieve road safety.’³² The Statement outlines the following limits to human rights under the HRA:
- Section 8 HRA—Recognition and equality before the law:
 - it is withing community expectations that everyone has access to the road network, including roads, footpaths, bicycle paths and shared path, and that these are regulated for everyone’s safety;
 - the bill includes amendments providing ‘police officers with the power to direct a person to get off, or not get on, a vehicle or animal if the police officer believes on reasonable grounds that the person is under the influence of alcohol or a drug.’;³³ and
 - the amendment ‘seeks to support an early intervention process where a person has the ability to get off or not get on a vehicle’ when given direction by a police officer to protect the safety of all road users;³⁴
 - Section 13 HRA—Freedom of movement:
 - the amendments potentially limit these through the provision allowing for police to direct a person to get off, or not get on, a vehicle or animal; the increase in disqualification periods for serious offences; and the new offence for negligent driving occasioning actual bodily harm imposing a potential penalty of imprisonment;³⁵ and
 - the increased penalties aim to recognise the seriousness of offences and the need for public safety measures directed at changing or removing the risk of the behaviour;³⁶
 - Section 18 HRA—Right to liberty and security of person:
 - the new offence for negligent driving occasioning actual bodily harm imposes a potential maximum penalty of six months imprisonment;³⁷ and

³¹ Explanatory Statement, Road Transport Legislation Amendment Bill 2021, pp 1–2.

³² Explanatory Statement, Road Transport Legislation Amendment Bill 2021, pp 2.

³³ Explanatory Statement, Road Transport Legislation Amendment Bill 2021, p 3.

³⁴ Explanatory Statement, Road Transport Legislation Amendment Bill 2021, p 4.

³⁵ Explanatory Statement, Road Transport Legislation Amendment Bill 2021, p 5.

³⁶ Explanatory Statement, Road Transport Legislation Amendment Bill 2021, p 7.

³⁷ Explanatory Statement, Road Transport Legislation Amendment Bill 2021, p 7.

- the penalty is aimed at ‘the most serious or repeated instances of this offence, as actual bodily harm can include very serious injuries, including serious physical injuries and psychological injuries severely impacting a person for months or years.’; and
 - the penalty is aimed at ensuring drivers exercise care and skill when driving on the road network to prevent further injuries and death;³⁸
- Section 22 HRA—Rights in criminal proceedings:
 - the bill introduces new strict liability offences ‘operating a personal mobility device without proper control; and failure to comply with direction of a police officer to get off, or not get on, a vehicle or animal.’;
 - the offences have an infringement notice penalty attached which are within the normal range of such offences;³⁹ and
 - and reflect community expectations in relation to unacceptable behaviour or risks to health and safety, property or revenue; and⁴⁰
 - Section 27B HRA—Right to work:
 - The Bill increases minimum automatic disqualification periods for a range of offences;⁴¹
 - ‘Licence disqualification periods are designed to encourage safe and responsible driving. A driver license is a privilege not a right’;⁴² and
 - the existing periods were considered insufficient to deter offending behaviour and support behaviour change.⁴³

PRESENTATION

- 3.7 In presenting the Bill, Minister for Transport and City Services, Mr Chris Steel MLA said that everyone interacts with the road network every day, as a driver, cyclist or pedestrian. He stated that ‘one of the great tragedies of road safety is that the consequences of negligent or culpable driving are often felt by people who are not at fault. Road safety is a shared responsibility and it is up to all of us to ensure that Canberrans can get safely home to their families at night.’⁴⁴

³⁸ Explanatory Statement, Road Transport Legislation Amendment Bill 2021, p 8.

³⁹ Explanatory Statement, Road Transport Legislation Amendment Bill 2021, p 10.

⁴⁰ Explanatory Statement, Road Transport Legislation Amendment Bill 2021, p 11.

⁴¹ Explanatory Statement, Road Transport Legislation Amendment Bill 2021, p 11.

⁴² Explanatory Statement, Road Transport Legislation Amendment Bill 2021, p 12.

⁴³ Explanatory Statement, Road Transport Legislation Amendment Bill 2021, p 13.

⁴⁴ Mr Chris Steel MLA, *Legislative Assembly Debates*, 5 August 2021, pp 2344–2345.

- 3.8 Mr Steel MLA told the Assembly that the Bill amends the existing penalty framework to strengthen the hierarchy of offences for negligent driving by:
- introducing a new offence to address negligent driving that occasions actual bodily harm;
 - increasing the infringement notice penalty for negligent driving that does not occasion death, grievous bodily harm or actual bodily harm;
 - increasing the minimum automatic licence disqualification periods for culpable driving and negligent driving occasioning death and grievous bodily harm; and
 - introducing two new strict liability offences to address unsafe use of other vehicles, including personal mobility devices such as e-scooters.⁴⁵
- 3.9 This Bill aligns with the Government's strategic objectives and commitments in the [ACT Road Safety Strategy 2020-2025](#) and [Road Safety Action Plan 2020-23](#).⁴⁶
- 3.10 The Minister noted that there are currently penalties based on negligent conduct occasioning death, grievous bodily harm or in any other case. This means drivers can receive a relatively minor penalty for injuring another road user if the injury is not considered to be grievous bodily harm, this gap needs to be closed, and that is what this bill will achieve.⁴⁷
- 3.11 The Minister also acknowledged the work done by Jo Clay MLA who introduced the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2) seeking to increase protections for Vulnerable Road Users from negligent driving. He also notes that 'we agree there is a gap which needs to be closed in the existing penalties framework of negligent driving occasioning harm that does not amount to grievous bodily harm. The Bill I am introducing today would strengthen protections for all road users, not just pedestrians and cyclists.'⁴⁸
- 3.12 The Minister noted that the Government Bill applies to users across the whole road network as is not just drivers who must be mindful of their impact on other users of our road network. People who use personal mobility devices such as e-scooters, e-skateboards and segways, like motorists and cyclists, are also required to maintain proper control of their vehicles at all times.⁴⁹

⁴⁵ Mr Chris Steel MLA, *Legislative Assembly Debates*, 5 August 2021, p 2345

⁴⁶ Mr Chris Steel MLA, *Legislative Assembly Debates*, 5 August 2021, p 2349.

⁴⁷ Mr Chris Steel MLA, *Legislative Assembly Debates*, 5 August 2021, p 2345.

⁴⁸ Mr Chris Steel MLA, *Legislative Assembly Debates*, 5 August 2021, p 2347.

⁴⁹ Mr Chris Steel MLA, *Legislative Assembly Debates*, 5 August 2021, p 2348.

4 STRICT LIABILITY AND THE ELEMENTS OF OFFENCES

THE BILLS AND STRICT LIABILITY

- 4.1 In the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2), proposed section 5D, ‘Negligent driving—harm to Vulnerable Road User’, provides that a person commits an offence if: ‘the person drives a motor vehicle negligently on a road or road related area’;⁵⁰ ‘the driving of the motor vehicle causes harm to another person’;⁵¹ and ‘the other person is a Vulnerable Road User’.⁵² It also provides that *strict liability* applies to proposed paragraphs (1) (b) and (c).⁵³
- 4.2 The Road Transport Legislation Amendment Bill 2021 introduces two new strict liability offences⁵⁴ in proposed section:
- 244K—‘Travelling in or on personal mobility device—maintaining proper control’, provides that ‘A person must not travel in or on a personal mobility device unless the person has proper control of the personal mobility device’;⁵⁵ and
 - 304A—‘Direction by police officer to get off, or not get on, vehicle or animal’, provides that a person commits an offence if: ‘the person is given a direction under [proposed] subsection (1); and does not comply with the direction’.⁵⁶

NATURE OF STRICT LIABILITY

- 4.3 As noted in the Standing Committee on Legal Affairs, *Strict and Absolute Liability Offences* 2008 report:

⁵⁰ Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2), s 5D(1)(a), p 2.

⁵¹ Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2), s 5D(1)(b), p 3.

⁵² Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2), s 5D(1)(c), p 3.

⁵³ Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2), s 5D(2), p 3.

⁵⁴ Explanatory Statement, Road Transport Legislation Amendment Bill 2021, p 10.

⁵⁵ Road Transport Legislation Amendment Bill 2021, s 244K, p 5.

⁵⁶ Road Transport Legislation Amendment Bill 2021, s 304A (2)(a) and (b), p 5.

At law, criminal offences comprise two elements—the mental or fault element and the physical element, the *mens rea* and the *actus reus* respectively. Generally, both must coincide for a person to be guilty of an offence or an element of an offence.⁵⁷

- 4.4 The Report noted where strict or absolute liability are applied to an offence, this ‘removes the fault element of an offence’, so that ‘there is no need for a finding of fault’ to prove an offence. So long as ‘the defendant’s action is proved to have caused the offence, thereby proving the physical elements of the offence’, that is: ‘the conduct or consequences of conduct’, there is ‘no need to prove the mental or fault element’.⁵⁸
- 4.5 Strict liability offences thus ‘do not require proof of fault’, however they also provide for a defence of ‘an honest and reasonable mistake of fact’. Absolute liability offences do not allow for such a defence.⁵⁹
- 4.6 These variants are provided for in the ACT under the *Criminal Code 2002* (ACT), Section 11 of which provides that:
- ‘An offence consists of physical elements and fault elements’ (s 11(1));
 - ‘However, the law that creates the offence may provide that there is no fault element for some or all of the physical elements’(s 11(2)); and
 - ‘The law that creates the offence may provide different fault elements for different physical elements’ (s 11(3)).

ADVANTAGES AND DISADVANTAGES

- 4.7 There is a significant literature on strict liability, expressing views on its advantages and disadvantages. On one hand, as will be seen in submissions to the present inquiry, there are perceptions that strict liability offences save time and money, free-up the courts to consider other matters, and provide a greater deterrent because there is less uncertainty arising from outcomes of court deliberations.⁶⁰

⁵⁷ Standing Committee on Legal Affairs, *Strict and Absolute Liability Offences*, Report 7, February 2008, p 5, viewed 6 August 2021, available at: <https://www.parliament.act.gov.au/parliamentary-business/in-Committees/previous-assemblies/Standing-Committees-Sixth-Assembly/Standing-Committee-on-Legal-Affairs/07.-Strict-and-Absolute-Liability-Offences>

⁵⁸ Standing Committee on Legal Affairs, *Strict and Absolute Liability Offences*, p 5.

⁵⁹ Australian Law Reform Commission, *Traditional Rights and Freedoms—Encroachments by Commonwealth Laws*, December 2015, pp 285–286.

⁶⁰ See for example Submission No 34—Living Streets Canberra, p 5; Submission No 29—Ms Sarah Todd, p [1]; Submission No 40—Mr Greg Berry, p [1]; Submission No 27—30Please pp [2-3]; Submission No 26—AFPA, pp3-4; Submission No 24—Mr Robert Dalitz, p [1]; Submission No 28—Mr Richard Bush, p [1]; Submission No 32—Mr Kip Tanner, p 1; Submission No 25—Pedal Power ACT, p 2; and Submission No 23—Mr Jeff Ibbotson, pp [1-2].

- 4.8 Other views stress a common law principle that presumes that ‘*mens rea*, an evil intention, or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence’. These see the ‘general requirement of *mens rea*’ as ‘one of the most fundamental protections in criminal law’, reflecting the idea that ‘it is generally neither fair, nor useful, to subject people to criminal punishment for unintended actions or unforeseen consequences unless these resulted from an unjustified risk’, that is: from ‘recklessness’.⁶¹
- 4.9 A 2002 report by the Senate Standing Committee for the Scrutiny of Bills, identified the following potential disadvantages of strict liability:
- a lack of court scrutiny;
 - the risk that innocent people will pay the infringement notice penalty to avoid the expense of contesting proceedings;
 - the possibility of ‘net widening’ with the automatic issue of an infringement notice where there would otherwise be a caution or a warning;
 - failure to consider the circumstances of individual cases;
 - dispensing with the traditional common law protection of *mens rea*;
 - reversing the onus of proof; and
 - diminishing the moral content of particular offences.⁶²

⁶¹ *Traditional Rights and Freedoms—Encroachments by Commonwealth Laws*, December 2015, p 286.

⁶² Senate Standing Committee for the Scrutiny of Bills, Sixth Report of 2002, *Application of Absolute and Strict Liability Offences in Commonwealth Legislation*, pp.273-274, citing the Australian Law Reform Commission (ALRC) report on *Customs and Excise* (1992), and the New South Wales Law Reform Commission, discussion paper on *Sentencing* (1996), viewed 6 August 2021, available at: <https://www.aph.gov.au/binaries/senate/Committee/scrutiny/bills/2002/b06.pdf> and cited in Standing Committee on Legal Affairs, *Strict and Absolute Liability Offences*, pp 5-6.

5 SCRUTINY REPORTS

EFFECT OF THE ROAD TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT) AMENDMENT BILL 2021 (No 2)

- 5.1 According to Scrutiny Report 7 of 27 July 2021, the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2) would:

introduce an offence of driving a motor vehicle on a road or road related area which causes harm to a Vulnerable Road User, with a maximum penalty of 50 penalty units. It will apply the definition of Vulnerable Road User currently in section 7A, namely a road user other than the driver of, or passenger in, an enclosed motor vehicle, to the Act as a whole, including this new offence. Two elements of the proposed offence, that the driving caused harm to another person, and that the other person is a Vulnerable Road User, will have strict liability applied to them. As strict liability reduces the fault elements that have to be established by the prosecution, and places the onus on the defendant to establish any defences available, the Bill may limit the rights in criminal proceedings, including the presumption of innocence, protected by section 22 of the HRA.⁶³

- 5.2 It said that the Explanatory Statement to the Bill justified this limitation on grounds that ‘drivers should always consider the risk to Vulnerable Road Users’, and that alternative offences involved penalties which were ‘either too low to recognize the culpability of the driver’s actions’, or involved ‘a degree of culpability or complexity’ to an extent that it inhibited enforcement.⁶⁴

COMPARISONS

- 5.3 The Scrutiny Report then considered comparable negligent driving offences elsewhere in the statute book, in particular whether they included a fault element (and thus were not matters of strict liability) and whether they provided that such matters were to be decided by a court.⁶⁵

⁶³ Standing Committee on Justice and Community Safety (Legislative Scrutiny Role), Scrutiny Report 7, 27 July 2021, p 7, viewed 6 August 2021, available at:

https://www.parliament.act.gov.au/_data/assets/pdf_file/0007/1809511/Report_07.pdf

⁶⁴ Scrutiny Report 7, 27 July 2021, p 7.

⁶⁵ Scrutiny Report 7, 27 July 2021, p 8.

- 5.4 The Scrutiny Report stated that the offence of negligent driving (set out in section 6 of the [Road Transport \(Safety and Traffic Management\) Act 1999](#)) provided for increased penalties where driving occasioned death or grievous bodily harm. In this instance, it said, there was no fault-element associated with the level of harm. Where driving could objectively be considered negligent the prosecution was obliged ‘only [to] establish that the accused was intending to drive the car in the way they did’, and negligence was established where the accused ‘drove a motor vehicle in a manner involving departure from standard care for other users of the road to be expected of ordinary prudent drivers in the circumstances’. Importantly, in considering such offences the court ‘must have regard to all the circumstances of the case, including the nature, condition and use of the road and actual and expected amount of traffic’, as provided in subsection 6(2) of the Act.⁶⁶
- 5.5 The Report stated that such ‘graduated penalties’ were also employed in the offence of furious, reckless or dangerous driving (in section 7 of the Act), which included the aggravated offence of ‘driving in a way that puts at risk the safety of a Vulnerable Road User’.⁶⁷
- 5.6 However, the Report said, section 29 of the [Crimes Act 1900](#) provided that a person who, by the culpable driving of a motor vehicle, caused the death of another person was guilty of an offence punishable, on conviction, by imprisonment for 14 years. ‘Culpable driving’ included driving negligently, defined in this instance as ‘fails unjustifiably and to a gross degree to observe the standard of care that a reasonable person would have observed in all the circumstances of the case’ (subsection 29(7) of the Act). The Report said that negligence, in this instance remained ‘an objective standard for which the driver’s state of mind, particularly their view as to the likely risk of harm, [was] not directly in issue’.⁶⁸
- 5.7 In making these statements the Report identified offences for which the intent of the offender—as commonly understood—was not to be considered; where an agreed statutory or common law formulation was relied upon to as the criterion for fault elements for negligence, and where it was deemed necessary for courts to deliberate and determine whether offences had been committed.⁶⁹
- 5.8 The Report also appeared to say that while proposed paragraph 5D(1)(a) was technically a fault element, different criteria for negligence were provided in the statute book, some of which did not place much reliance on *mens rea*. These were fault elements which relied on an ‘objective risk of harm to others’ rather than a ‘guilty mind’. This was important because if proposed paragraph 5D(1)(a) were to be a traditional fault element, it would be difficult to see

⁶⁶ Scrutiny Report 7, 27 July 2021, p 8.

⁶⁷ Scrutiny Report 7, 27 July 2021, p 8.

⁶⁸ Scrutiny Report 7, 27 July 2021, p 8.

⁶⁹ Scrutiny Report 7, 27 July 2021, p 8.

how the offence could be considered to be, as a whole, a strict liability offence. If not, it would cast doubt on powers to issue infringement notices for the offence.⁷⁰

- 5.9 The Report said that the Bill took a different approach, ‘providing for the element of harm and nature of the person harmed as separate physical elements to which strict liability applies’. The Bill would also apply Chapter 2 of the *Criminal Code* to this offence at clause 4. The report said that Section 21 of Chapter 2 of the *Criminal Code* defined the fault element of negligence as:⁷¹

‘conduct meriting criminal punishment for the offence because it involves both falling short of the standard of care that a reasonable person would exercise in the circumstances and a high risk that the physical element exists or will exist’.⁷²

- 5.10 However, the report noted, if that definition was intended to apply for the offence proposed in the Bill, it was not clear ‘to which physical element the test of negligence might apply’. It was also unclear to what extent the ‘objective risk of harm to others’, especially the ‘objective risk of harm to Vulnerable Road Users’, should be considered in determining whether the offending behaviour met the criteria for negligence.⁷³

SUMMARY OF CONCERNS

- 5.11 In saying this the Report set out three propositions, that:

- there were defined criteria for comparable provisions dealing with negligence by drivers, and that the Bill was silent on which criterion was applicable for negligence for the offence it proposed;
- the construction of the elements of the offence was unusual in that it applied strict liability to two of the three elements proposed for the offence; and
- it was usual for offences of this type, defined in the statute book, to be decided by the courts, and that the provision of an infringement notice penalty in this instance, where courts would not be involved, was out of the ordinary.

- 5.12 The Report took into account Section 11(3) of the *Criminal Code 2002*, which provides that a law creating an offence ‘may provide different fault elements for different physical elements’, asking to which of the two physical elements—proposed paragraph 5D(1)(b), ‘the driving of the motor vehicle causes harm to another person’ or proposed paragraph 5D(1)(c) ‘the other

⁷⁰ Scrutiny Report 7, 27 July 2021, p 8.

⁷¹ Scrutiny Report 7, 27 July 2021, p 8.

⁷² Scrutiny Report 7, 27 July 2021, p 8.

⁷³ Scrutiny Report 7, 27 July 2021, p 8.

person is a Vulnerable Road User’—the fault element ‘the person drives a motor vehicle negligently on a road or road related area’ (subsection 5D(1)(a)) would apply.⁷⁴

- 5.13 The Scrutiny Committee asked the Member to respond to their request for further information on how the standard of negligence is to be applied for the offence before the Bill is debated.⁷⁵

EFFECT OF THE ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2021

- 5.14 Scrutiny Report 8 of 24 August 2021, the Road Transport Legislation Amendment Bill 2021 outlines that:

Various rights protected under the HRA are potentially limited by the amendments put forward in the Bill. The extension of automatic disqualification periods may limit the right to work protected by section 27B of the HRA. Creation of new offences relating to not controlling personal mobility devices and being directed to get off, or not get on, various alternatives to motorised transport may have an unequal effect on those persons with substance abuse issues or who may be dependent on such transport due to a physical or mental impairment of some form,¹ and hence may potentially limit the right to equality before the law protected by section 8 of the HRA. As these new offences will be strict liability offences the presumption of innocence protected by the rights in criminal proceedings under section 22 of the HRA may also be limited. Extending the penalties associated with negligent driving occasioning actual bodily harm, including a potential for imprisonment of up to six months, may limit the right to liberty and security of person protected by section 18 of the HRA. By adding restrictions on the use of certain forms of transport the amendments generally may limit the right to freedom of movement protected by section 13 of the HRA.⁷⁶

‘The Explanatory Statement accompanying the Bill recognises these potential limitations and provides a justification for why they should be considered reasonable using the framework set out in section 28 of the HRA.’⁷⁷

⁷⁴ Scrutiny Report 7, 27 July 2021, p 8.

⁷⁵ Scrutiny Report 7, 27 July 2021, p 8.

⁷⁶ Standing Committee on Justice and Community Safety (Legislative Scrutiny Role), Scrutiny Report 8, 24 August 2021, p 5-6, viewed 15 November 2021, available at:
https://www.parliament.act.gov.au/_data/assets/pdf_file/0003/1828452/Report_08.pdf

⁷⁷ Scrutiny Report 8, 24 August 2021, p 6.

6 SUBMISSIONS

- 6.1 This chapter considers matters raised in submissions to the inquiry, including: perceptions of risk and harm reported in the submissions; views expressed about offences and penalties; and comments on legislative mechanisms, both those proposed in the Bills and those already established in statute.
- 6.2 The Committee notes that of the 46 submissions received, 42 were received in response to a call for submissions in July 2021 for the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2). Four further submissions were received after the call for submissions was made in September 2021 for the Road Transport Legislation Amendment Bill 2021.

RISKS AND HARMS

STATISTICAL DESCRIPTIONS

- 6.3 Submissions to the inquiry both alluded to statistical characterisations of risks and harms for Vulnerable Road Users, and personal experiences.
- 6.4 A submission by Mr Chris Steel MLA, Minister for Transport and City Services, noted that Vulnerable Road User casualties between 2011 and 2020 had been considered in the 2020 ACT Road Crash report, which showed that in 2020, two fatalities and 190 injuries involved Vulnerable Road Users, that is: cyclists, pedestrians, or motorcyclists. This represented 29% of fatalities and 31% of injuries that occurred in 2020. Of these, 78 casualties involved cyclists—the lowest figure since 2016—and 36 involved pedestrians, which was the lowest since 2013. Nevertheless, nearly 25% of all casualties admitted to hospital in 2020 were cyclists and pedestrians, and this showed that Vulnerable Road Users continued to be overrepresented in road casualty statistics.⁷⁸
- 6.5 A submission by the 30Please campaign, which campaigns for ‘for 30km/h speed limits to be the norm for our neighbourhood streets in Australia’, said that although Australia had ‘an extremely low share of trips made by active transport’ compared with other OECD countries, pedestrians and cyclists continued to make up 16.7% of road fatalities in 2020. It said that ‘a culture change’, ‘recognizing the benefits of active travel and the responsibility of motor vehicle drivers to watch out for Vulnerable Road Users’ was needed. Without ‘significant changes’ to road systems, it said, there was a risk that new active transport users would be killed on Australia’s roads, and to avoid this it was necessary to create ‘a safe and connected

⁷⁸ Submission No 38—Mr Chris Steel MLA, p [1].

walking and cycling network'. According to the submission, this could be done quickly, at a low cost, by reducing speeds for motorized traffic.⁷⁹

PERSONAL ACCOUNTS

- 6.6 A number of submitters expressed concerns about risks and harms as Vulnerable Road Users, based on their personal experience.
- 6.7 Ms Alex O'Brien told the Committee about the experience of living in Braddon. Cars sped through streets during peak hour, making it difficult to cross the road or safely ride a bike. It was necessary to ride on the footpath in one part of the journey between Braddon and Canberra City as there was no safe bike lane and many cars passed too closely. During attempts to ride on the road cars had not given way at roundabouts, and again drove too closely, and riding did not feel safe, 'even though it is in the city centre and is one of the better looked after suburbs'. There were also problems navigating as a pedestrian in Braddon, where the culture was very much 'cars are first, everyone else is second'. As a result, pedestrians attempting to cross roads would often get stranded on 'tiny islands' in the centre of roads, 'with cars passing by on either side, still not slowing to let us across'.⁸⁰
- 6.8 Ms Leela Ross told us that on the 'short stretches of backroad' she rode 'too many car drivers treat us like obstacles rather than people', and were 'willing to put us and others in harm's way to save a moment of their time'. This was because there were insufficient consequences for such behaviour, even if drivers were caught and charges laid.⁸¹
- 6.9 Ms Sharyn Foo said that she was concerned about navigating around car drivers while travelling at speed: in particular about drivers failing to indicate or being distracted by mobile phones. Often, in practice, these two issues were 'interrelated'. She had a near miss at a roundabout when a driver using a mobile phone had failed to signal a turn.⁸²
- 6.10 Mr Roger Bacon told us that danger from traffic, or the perception of danger, was a 'major disincentive' to cycling in the ACT, particularly for women. For this reason, male cyclists outnumbered female cyclists by 2 to 1, and conditions for cyclists in many areas—such as the journey from Fyshwick to Canberra Hospital, described as 'ten kilometres of terror'—were suitable only for the 'strong and fearless'. For this reason, the law should, in his view, focus on 'minimising this perception of danger arising from treating cyclists as second-class road users'; showing the community that 'cyclist safety is taken seriously'; and ensuring that penalties

⁷⁹ 30Please, viewed 3 August 2021, available at: <https://30please.org/> and Submission No 27–30Please p [2].

⁸⁰ Submission No 03—Ms Alex O'Brien, p [1].

⁸¹ Submission No 04—Ms Leela Ross, p [1].

⁸² Submission No 06—Ms Sharyn Foo p [1].

reflect 'the gravity of traffic infringements that jeopardise the safety or even the life of people riding bikes'.⁸³

PERSONAL EXPERIENCE OF ACCIDENTS

- 6.11 A number of submissions told of their personal experience of road accidents as Vulnerable Road Users.
- 6.12 Ms Carolyn Hawkins told us that on December 26, 2017, she cycling on the Uriarra Circuit at 8am when a driver in an SUV 'tried to pull out as I was cycling down the hill towards Uriarra crossing', at which point the female driver 'swore at me and menaced me in her vehicle'. She told the Committee that she had not cycled on that road since. While she was 'very happy' to cycle in rural Victoria and NSW, subject COVID-19 restrictions, she did not cycle on the road in the ACT 'unless it is a group event with partial road closures'. She also told the Committee that she was 'a small female' and 'simply [did] not feel safe cycling in the ACT'.⁸⁴
- 6.13 In her submission, Ms Dominica van der Ploeg told the Committee that she had had 'several near misses' from cars. In two cases, cars had 'swerved close to me with the undoubted intention to knock me off my bike', while there were many 'near-accidents where the car simply didn't realise that I had right of way or any rights'.⁸⁵
- 6.14 Mr Quentin Leseney told the Committee in his case he was riding his bike on the road near local shops and had stopped at traffic lights when a car driver came from behind and wedged in front, 'apparently in an attempt to overtake when the light would turn green'. He 'carefully moved away from the precarious situation', pushing his bike forward and to the left, but then the driver abused him verbally and when the lights changed, clipped his handle bar with his side mirror while overtaking, 'taking me to the ground in the middle of moving traffic'. He told the Committee that the car did not stop, but some witnesses provided help and the car registration details. When he went to the police to report dangerous driving causing injury and verbal abuse, the officer in charge told him to fill out a traffic incident form and that 'that was all they could do'. While this was one incident, he thought it 'sufficient to scare anyone from riding a bike on the road because of crazy people and police inaction'. Before the incident, he told the Committee, he had enjoyed many days of riding to work, but 'every single one after that came with the constant fear of that driver coming past again'.⁸⁶

⁸³ Submission No 08—Mr Roger Bacon, p [1].

⁸⁴ Submission No 10—Ms Carolyn Hawkins, p [1].

⁸⁵ Submission No 13—Ms Dominica van der Ploeg, p [1].

⁸⁶ Submission No 16—Mr Quentin Leseney, p [1].

6.15 In her submission, Ms Sarah Todd told the Committee that she had ‘always endeavoured to ride responsibly and obey the relevant road rules’. This had not prevented ‘several near misses’, avoiding injury only by taking ‘quick evasive action’. But three years ago, a motorist ‘without warning went through a stop sign and hit me on my left, knocking me off my bike and breaking my right wrist’.⁸⁷ This, she told the Committee, significantly disrupted her life:

8 weeks in a cast, numerous visits to the outpatients ward at the Canberra Hospital and to physiotherapists, as well as time off work and needing ergonomic equipment to be purchased by my employer so I could continue to type, not to mention significant loss of the ability to lead my usual active lifestyle for about three months while my wrist healed.⁸⁸

6.16 Ms Todd told the Committee that this would not have reached the threshold for grievous bodily harm and would not have invoked one of the higher tier existing offences. As a result, she ‘strongly’ supported the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2), saying that the creation of the new offence would fill ‘a much-needed gap’ in legislation.⁸⁹

6.17 Ms Clare de Castella Mackay told us of her accident of 19 April 2021 which was a collision with a car as she was riding her electric bike on a bike path in broad daylight. She told the Committee that she was wearing a high visibility vest, and that the bike lane ‘was marked with no less than four signs stating that cyclists had priority over cars on the approach to the spot where the collision happened’.⁹⁰

6.18 Ms de Castella Mackay told the Committee:

A car turned left off the road adjoining the bike path, crossing the bike path directly in front of me and I was unable to stop in time to avoid hitting it. I was knocked to the ground and left lying on the road whilst the car drove off without stopping. Some passers-by came to my assistance and called an ambulance and the police, but unfortunately none of the witnesses had managed to get the number plate of the car, which was clearly at fault. I was taken to hospital with a deep facial wound, had stitches in my face, a black eye and felt generally very sore, battered and bruised. Luckily my injuries were not serious.⁹¹

⁸⁷ Submission No 29—Ms Sarah Todd, p [1].

⁸⁸ Submission No 29—Ms Sarah Todd, p [1].

⁸⁹ Submission No 29—Ms Sarah Todd, p [1].

⁹⁰ Submission No 30—Ms Clare de Castella Mackay, p [1].

⁹¹ Submission No 30—Ms Clare de Castella Mackay, p [1].

6.19 Ms de Castella Mackay also told the Committee that, with encouragement, she had made a complaint to the police, who advised that there would be a media release in an attempt to find the driver involved in the accident. Subsequently the driver came forward, ‘very apologetic’ and offering to pay for any damage. However:

there was a massive disconnect between her response and what had happened to me as a cyclist. Firstly, she was offering me financial compensation when the damage had been predominantly to my body and my sense of security as a cyclist. When a car hits another car, then the damage may often be to the vehicles. When a car hits a cyclist, unfortunately there is usually physical damage, pain and distress to another person. I wanted first and foremost to give her a sense of what it feels like to be hit by a car which is completely at fault and then drives off leaving you lying on the road. I also wanted her to understand that it could have been so much worse. Her negligent driving could have killed me and if she keeps on driving like that, she could be responsible for killing or seriously injuring other people.⁹²

6.20 Ms de Castella Mackay told the Committee that police advised that the driver would receive two infringement notices—for negligent driving and for leaving the scene of an accident—and that penalties would amount to approximately \$700. She considered this penalty ‘vastly inadequate’ because the driver, through her negligence, had caused ‘considerable pain and distress’.⁹³

OFFENCES AND PENALTIES

6.21 Submissions to the inquiry:

- said that current offences and penalties did not meet community expectations;
- expressed broad support for the Bills;
- emphasised the importance of an effective deterrent; and, in some cases; and
- argued for further measures beyond what was proposed in the Bills.

⁹² Submission No 30—Ms Clare de Castella Mackay, p [1].

⁹³ Submission No 30—Ms Clare de Castella Mackay, p [2].

COMMUNITY EXPECTATIONS NOT BEING MET

- 6.22 Pedal Power ACT told us that it was contacted ‘at least weekly’ by people who had experienced a near miss or collision on our roads. Many did not feel that the penalties in relation to Vulnerable Road Users were adequate and it was important that laws reflected community expectations that ‘our most vulnerable’ would be afforded ‘an additional layer of protection’.⁹⁴
- 6.23 In his submission, Mr Greg Berry told us that although most vehicle drivers respected road rules and the right of bike riders to use the roads, bike riders were facing increased risks due to drivers being distracted by mobile phones and other in-vehicle devices. Some drivers appeared to think that bike riders were not entitled to be on the roads and in their presence drove ‘negligently and aggressively’. More generally, drivers failed to pay attention and drove too close to bikes, drifted out of lanes into the paths of bikes, rear-ended bikes, failed to give way when turning left, and cut-off bikes in intersections and slip lanes.⁹⁵
- 6.24 Mr Berry supported the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2) because it would ‘fill a gap in the present law’ and improve protections for Vulnerable Road Users. It would improve upon the current situation, he said, where the penalty for this type of negligent driving was similar to that for a low-grade speeding offence, unless it caused grievous harm or death. He told the Committee that there were many cases of injury to Vulnerable Road Users that do not meet that threshold but still led to ‘broken bones, concussion, joint damage, loss of teeth, disfiguring skin damage, stress and pain’, and this led him to support a new penalty for causing harm to Vulnerable Road Users by negligent driving. He thought it important that there was ‘an effective deterrent to negligent driving causing harm’, supported a traffic infringement notice with a fine of \$1600, but considered the proposed loss of 3 demerit points ‘inadequate’ and suggested that this be increased to 4.⁹⁶
- 6.25 Mr Sean Minney told the Committee that while there was a large number of regular car users for whom steps were taken to ensure their safety, there was a lack of encouragement for them to be careful around road users who were more vulnerable. It was clear the current penalties were insufficient in light of community responses to the 3 October 2020 accident on Coulter Drive, and the Bill was a ‘first step’ in changing the behaviour of road users failing to take adequate care on ACT roads.⁹⁷

⁹⁴ Submission No 25—Pedal Power ACT, p 4.

⁹⁵ Submission No 40—Mr Greg Berry, p [1]. and see Submission No 28—Mr Richard Bush, p [1]. and Submission No 32—Mr Kip Tanner, p 1. for similar submissions.

⁹⁶ Submission No 40—Mr Greg Berry, p [1].

⁹⁷ Submission No 36—Mr Sean Minney, p [1].

- 6.26 In his submission, Mr Michael Watson told the Committee about an accident six years ago in which a family member riding a bicycle was struck by a speeding truck, resulting in ‘severe injuries’. He said that the truck driver ‘lost a few licence points’ and ‘had to pay somewhere under a \$400 fine’. Conversations with the investigating police officer disclosed that as the law stood at the time, this was the appropriate penalty, leaving him ‘dismayed that the penalty tariff seemed to be based on the degree of rule exceedance and the value of property damage incurred’, with ‘insignificant regard for the damage inflicted on humans’.⁹⁸
- 6.27 Mr Watson told the Committee that the existing fine and loss of licence points appeared only to reflect the risk of harm to vehicle occupants who were ‘well protected by mandatory vehicle features designed to give occupants protection in an accident’. It did not reflect ‘the injury potential to an unprotected person on a road’, and that the difference in potential for injury between occupants of cars or trucks and unprotected road users was ‘enormous’. He said that when it came to Vulnerable Road Users prevention was more important than protection, and that regulatory framework should ‘reflect this reality’.⁹⁹

SUPPORT FOR MEASURES

- 6.28 Submissions expressed broad support for the measures proposed in the Bills.
- 6.29 In its submission, 30Please expressed support and agreed that current legislative arrangements did not meet community expectations, and failed to recognise the responsibility motor vehicle drivers should exercise in relation to Vulnerable Road Users.¹⁰⁰
- 6.30 The AFPA told the Committee that it supported the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2) and believed that the most appropriate way to enforce offences defined in the Bill was by using punitive Traffic Infringement Notices (TIN) which could be issued ‘if and when the Vulnerable Road User sustains injuries’. It said that current legislation was appropriate when either death or grievous bodily harm occurred, or harm did not occur at all, but that there was a gap for instances where harm was caused to a Vulnerable Road User and it did not reach the legal threshold of grievous bodily harm. In its view, the Bill would resolve this, and had the further advantage of providing an alternative to the having the matter decided by the courts if the offender accepted responsibility.¹⁰¹

⁹⁸ Submission No 20—Mr Michael Watson, p [1].

⁹⁹ Submission No 20—Mr Michael Watson, pp [1–2].

¹⁰⁰ Submission No 27–30Please pp [2–3].

¹⁰¹ Submission No 26—AFPA, pp 3–4.

- 6.31 In his submission, Mr Roger Dalitz supported the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2), in his view it was important to make drivers aware that they could not ‘cause serious harm to Vulnerable Road Users and simply get a slap on the wrist’, and the Bill was ‘a good start to behavioural change’.¹⁰²
- 6.32 Mr Gary Fan told the Committee that Vulnerable Road Users should be better protected under law. There were ‘too many examples of incredibly lenient punishments for deliberate malicious driving causing injury to Vulnerable Road Users’, and the proposal in the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2) to increase fines for negligent driving from \$393 to \$1600 would ‘go a long way to correct an injustice’.¹⁰³
- 6.33 Mr Matthew Busch told the Committee, regarding the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2), that:
- Not only is this approach sensible given the importance of protecting all road users, but it also makes sense given the laudable investments the Territory is making in cycling infrastructure such as paths, missing links, and cycleways. Without a safe road environment, no amount of infrastructure investment will overcome the effect unsafe drivers have on many citizens’ willingness to cycle. As the Territory also has ambitious transport emissions reduction targets, it seems to me that maximising the number of people cycling should be an important priority. Updating the road transport safety laws would be an important step in this direction.¹⁰⁴
- 6.34 Mr Bill Gemmell, Interim Chair, Weston Creek Community Council told the Committee, regarding the Road Transport Legislation Amendment Bill 2021, that:
- While Mr Steel’s Bill certainly provides for stronger penalties for culpable driving, negligent driving that causes harm, unsafe behaviour of mobility devices, and negligent driving that does not cause injury. Council, however, questions whether a court process would provide effective deterrence of the behaviours the Bill seeks to deter because only a small subset of matters would be likely to result in a penalty being applied. The main limiting factor would be caused by the inevitable rationing of scarce court, policing and prosecutorial resources.¹⁰⁵

DETERRENCE IMPORTANT

- 6.35 Submissions argued the importance of deterrence in changing driver behaviour toward Vulnerable Road Users.

¹⁰² Submission No 24—Mr Robert Dalitz, p [1].

¹⁰³ Submission No 09—Mr Gary Fan, p [1].

¹⁰⁴ Submission No 17—Mr Matthew Busch, p [1].

¹⁰⁵ Submission No 46—Weston Creek Community Council, p [2].

- 6.36 Pedal Power ACT told the Committee that, while many factors causing road accidents could be addressed through better infrastructure and vehicle safety technology, driver behaviour was ‘ultimately only addressed through effective education, adequate laws, and swift enforcement’, and cited research showing that addressing ‘perceptions of risk of detection and punishment, as well as the perceived certainty, swiftness and severity of punishment’, and ‘the perceived ability to avoid punishment’ were ‘critical factors in modifying driver behaviour’.¹⁰⁶
- 6.37 Pedal Power ACT said that research supported ‘deterrence-based approaches’ based on ‘the idea that anyone can be caught “anywhere, anytime” – to create behavioural change on our roads’. ‘Deterrence theory’ was ‘the driving force’ for enforcement programs including ‘drink and drug driving, speeding, mobile phone use and seatbelt non-use’, and held that ‘individuals will avoid offending if they fear the consequences and perceive they will be caught, the severity of the sanction and how quickly it is applied after the behaviour is exhibited’. In its view, the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2) satisfied these requirements and would be an effective deterrent.¹⁰⁷
- 6.38 In its submission, Living Streets Canberra told the Committee that for offences and penalties to be effective in changing behaviour, in their view there must be ‘deterrents to both the unwanted behaviour and avoiding the penalty’, and that the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2) achieved ‘both these goals’. It said that the on-the-spot penalty set out in the Bill ‘should send a clear message to all drivers about the need to drive with care for Vulnerable Road Users’. In its view, the penalty should be ‘at least equivalent to the maximum on-the-spot penalty for drivers’ and, ideally, ‘should be of similar deterrence to all drivers, regardless of income’, in which case the fine should be ‘even higher for higher income earners’.¹⁰⁸
- 6.39 Ms Sarah Todd told the Committee that the existing lower-tier offence provided insufficient deterrence to protect Vulnerable Road Users because it was ‘the same low penalty whether a person is injured in the incident or not’, and this sent ‘a message to drivers that they can commit quite heinous driving behaviour to bike riders and get away with a miniscule fine’. She said that the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2) proposed mid-tier offence for negligent driving harming vulnerable users was important to fill this gap:

The amount of the proposed penalty, the fact that it is an infringement rather than an offence attracting a jail term, and the fact that it is tailored to specific (vulnerable) road

¹⁰⁶ Submission No 25–Pedal Power ACT, p.2, citing Cedersund & Forward 2007; Stafford and Warr 1993i.

¹⁰⁷ Submission No 25–Pedal Power ACT, p.3.

¹⁰⁸ Submission No 34–Living Streets Canberra, pp.5-6.

users should mean that it is not only utilised more by the police, but that it serves as real deterrent to drivers from engaging in this type of behaviour.¹⁰⁹

- 6.40 In his submission, Mr Stephen Ryan told the Committee that to ensure a holistic approach to road safety for Vulnerable Road Users, it was important not only to put safe passing requirements in place, but also ‘realistic penalties’ of which vehicle drivers would take notice. There were many roads in the ACT that Vulnerable Road Users considered with trepidation due to ‘the risky actions of drivers of cars and heavy vehicles’. In the absence of a ‘major investment in new infrastructure for Vulnerable Road Users’, the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2) would provide a ‘major disincentive’ for drivers who ‘intended to scare but sometimes [caused] collisions and injuries’.¹¹⁰
- 6.41 Referring to the accident at Coulter Drive, where the driver’s penalty was a \$393 fine, Ms Dominica van der Ploeg told the Committee that this was ‘simply not enough to change mindsets’. Ms van der Ploeg told the Committee that she strongly believed that only stronger penalties and enforcement would really ‘get it into motorist heads that they need to look out for, and respect cyclists on the road’.¹¹¹

FURTHER MEASURES WARRANTED

- 6.42 Some submissions put the view that further measures, beyond those in the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2), were warranted if the safety of Vulnerable Road Users was to be assured.
- 6.43 Living Streets Canberra told the Committee that the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2) should be amended so that the loss of demerit points was equivalent to the maximum demerit points for other potentially harmful driving—that is: 6 demerit points—and that it should make provision for increased fines for high income-earners.¹¹²
- 6.44 The submission by Living Streets Canberra also referred to ‘gaps’ in sections 6, 7, 7A & 8 of the Road Transport (Safety and Traffic Management) Act 1999, ‘particularly the lack of clear recognition of harm other than injury’ and that ‘offences under those sections must be proven in court’.¹¹³

¹⁰⁹ Submission No 29—Ms Sarah Todd, p. [1].

¹¹⁰ Submission No 37—Mr Stephen Ryan, p. [1].

¹¹¹ Submission No 13—Ms Dominica van der Ploeg, p [1].

¹¹² Submission No 34—Living Streets Canberra, p 6.

¹¹³ Submission No 34—Living Streets Canberra, p 5.

6.45 The submission by Living Streets Canberra also noted that current ACT legislation was inconsistent in how it recognised the:

- ‘special status of Vulnerable Road Users’;
- ‘serious harm that other, more powerful road users can cause them’; and
- ‘need for potential harm-causers to be especially careful of Vulnerable Road Users’.¹¹⁴

6.46 The submission by Living Streets Canberra stated that there were ‘gaps and overlaps in the legislation’, and ‘expenses, time delays and risks’ for offences which required going to court. It said that one example of inconsistency in relevant legislation was that the involvement of a Vulnerable Road User aggravated an offence of reckless or dangerous driving, resulting in greater maximum penalties, but this was not so for negligent or menacing driving.¹¹⁵

6.47 In his submission, Mr Jeff Ibbotson told the Committee that he supported the stated purpose of the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2) ‘to improve road safety and... to bring penalties closer to meeting community expectations’. However, he said, a high-level fine was ‘not enough’.¹¹⁶

In a city with high average income, some will regard the current negligent driving garden fine as merely a cost of doing business. More is needed to emphasise the seriousness with which the legislature regards the offence, and the message of deterrence it wishes to send to the community. The risk to accumulating points more rapidly and losing one’s licence is a much more potent reminder of a driver’s responsibility to more vulnerable people who are on our roads.¹¹⁷

6.48 Mr Ibbotson told the Committee that the current traffic infringement notice for negligent driving includes the loss of three licence points, and that there were two offences — exceeding the speed limit by 30 km/h but less than 45 km/h, and driver using mobile phone for messaging, social networking, mobile application or accessing internet — which entailed the loss of four points. He suggested that the offence proposed in the Bill was ‘at least as dangerous and as warranting deterrence as these two offences’. The loss of an additional licence point was necessary ‘to distinguish the increased seriousness and consequences of the offence compared to common or garden negligent driving’. He recommended that the penalty for the offence proposed by the Bill should include the loss of four demerit points rather than three.¹¹⁸

¹¹⁴ Submission No 34—Living Streets Canberra, p 4.

¹¹⁵ Submission No 34—Living Streets Canberra, p 4.

¹¹⁶ Submission No 23—Mr Jeff Ibbotson, p [1].

¹¹⁷ Submission No 23—Mr Jeff Ibbotson, p [1].

¹¹⁸ Submission No 23—Mr Jeff Ibbotson, p [2]. and see Submission No 12—AusCycling, p [2].

6.49 Mr Jeff Ibbotson told the Committee also said that there was, however, a further gap in legislation. He told the Committee that he had experienced many near misses, ‘some frightening’, and that many of his friends had similar experiences. Some people said that they wouldn’t ride on roads otherwise suitable for cycling, due to fear of ‘being hit by inattentive drivers’, and some had said that they had stopped cycling altogether for the same reason. Taking this into account, he told the Committee, a further offence was needed ‘to deter negligent or aggressive behaviour that frightens Vulnerable Road Users without actually physically harming them’, for which ‘a fine in between that for the current and proposed offences would be appropriate’. This would be, in his view, ‘an infringement notice offence to deter conduct which frightens or adversely affects Vulnerable Road Users but does not involve physical harm’.¹¹⁹

6.50 Mr Daniel Riccardo told the Committee, in his view, that the Road Transport (Safety and Traffic Management) Act 1999 should be amended so that definitions and scope of reckless (Section 7) or menacing (Section 8) driving would take Vulnerable Road Users into account, specifically that the scope of reckless or menacing driving should be expanded to include ‘any activity that forces a pedestrian to take evasive action due to risks or threats to safety’.¹²⁰ He told us:

Acts of reckless or menacing driving, while alarming and stressful for drivers, are often centred on financial or logistic concerns relating to damage to vehicles. These same actions, when directed against a vulnerable pedestrian, are always direct threats to physical safety and therefore have the potential to cause psychological trauma and to impede a citizen’s right to safe movement. Menacing driving – such as forcing a pedestrian to run off the road to avoid injury – is tantamount to assault.¹²¹

6.51 Mr Riccardo told the Committee that this proposal was based on direct experience of ‘a distinct minority’ of drivers who ‘have no concept of a pedestrian’s right to use roads and who engage in dangerous and menacing behaviour that they would never consider demonstrating against fellow drivers’, and that without such amendments penalties were insufficient for drivers who ‘consider it optional to give way at pedestrian crossings, 90-degree turns, driveways and at red lights’.¹²²

6.52 In his submission, Mr Christopher Budd told the Committee that he had been:

astonished to discover that nothing more than ‘negligent driving’ was available for the incident that sparked the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2). I had assumed that something like ‘negligent driving

¹¹⁹ Submission No 23–Mr Jeff Ibbotson, p [2].

¹²⁰ Submission No 15–Mr Daniel Riccardo, p [1].

¹²¹ Submission No 15–Mr Daniel Riccardo, p [1].

¹²² Submission No 15–Mr Daniel Riccardo, p [1].

occasioning actual bodily harm' existed. Apparently not. Driving into people is ok so long as you only hurt them a little bit, it seems. To that end I think negligent driving occasioning ABH is necessary. It would carry the prospect of gaol time - as is usually the case when one human injures another in pretty much any other context.¹²³

- 6.53 However, Mr Budd told the Committee, the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2) was also necessary, as an offence occasioning Actual Bodily Harm (ABH) 'would require a proper prosecution', which 'would not always be easy and police may be reluctant to pursue'. On the other hand, with this Bill an 'on the spot' fine of \$1,600 instead of approximately \$400 was 'enough to cause financial pain that will be remembered', and was 'more commensurate' with the seriousness of the offence.¹²⁴

LEGISLATIVE ARRANGEMENTS

- 6.54 A number of submissions to the inquiry made comment about their personal experiences as Vulnerable Road Users and penalties and offences. It was less common for submitters to comment on the specific legislative mechanisms proposed by the Bill.
- 6.55 In his submission to the inquiry on behalf of the ACT Government, the Minister for Transport and City Services, Mr Chris Steel MLA, told the Committee that the intent of the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2) was 'commendable' in that it sought to 'improve road safety and increase penalties for behaviour that causes harm to Vulnerable Road Users, in line with community expectations', observing that since Vulnerable Road Users had 'little or no physical protection in the event of a collision', it was important to ensure that they were 'protected in other ways through safety reforms and initiatives'. However, he said, there were elements of the Bill that would benefit from further consideration 'to ensure that the ACT's road transport laws enhance the existing road transport framework'.¹²⁵
- 6.56 The Minister noted that the negligent driving offence proposed in the Bill would only apply when it resulted in harm to a Vulnerable Road User, and acknowledged that existing offences and associated penalties for negligent driving were 'not optimal' where an incident caused harm less than the threshold for grievous bodily harm. However, he said, the amendments proposed in the Bill should also seek to provide protections to persons other than Vulnerable Road Users in such circumstances, as it 'may not be in line with community expectations' to

¹²³ Submission No 18—Mr Christopher Budd, p [1].

¹²⁴ Submission No 18—Mr Christopher Budd, p [1].

¹²⁵ Submission No 38—Mr Chris Steel MLA, p [1].

provide different levels of protection according to the type of road user, ‘even where both the offending behaviour and the harm incurred were identical’.¹²⁶

6.57 The Minister told the Committee that the ACT Government’s *Road Safety Action Plan 2020-23* made a commitment to protect Vulnerable Road Users, but that the commitment also extended to other road users with characteristics that made them vulnerable, such as older drivers and children. Negligent driving, he said, endangered the safety of all road users and the regulatory framework should ensure that all road users were protected from harm.¹²⁷

6.58 In comments relevant to these, in his submission the Minister told us that the ACT Government had undertaken a ‘significant body of work’ over the past few months ‘to enhance the existing negligent driving framework’.¹²⁸ He introduced the Road Transport Legislation Amendment Bill 2021 into the Legislative Assembly ‘to strengthen the Territory’s existing road transport framework and better protect all road users’.¹²⁹

WHETHER STRICT LIABILITY AND INFRINGEMENT NOTICES WERE APPROPRIATE

6.59 Under the heading ‘Proportionality’, Minister for Transport and City Services, Mr Chris Steel MLA told the Committee that there was also a question as to whether the penalties proposed in the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2) were appropriate ‘give the serious consequences of the behaviour ... to be addressed’. Noting that the new offence would attract a maximum penalty of 50 penalty units or an infringement notice penalty of \$1600 and the loss of three demerit points, he suggested that it was usually the case in statute that such serious offences as these, ‘especially those with fault elements’, would be considered by the courts.¹³⁰

6.60 The Minister told the Committee that there were overriding principles for setting penalties, which were that they should:

- be relative to the seriousness or prevalence of the behaviour;
- reflect the relativity of the offence to other offences of a similar nature;
- reflect the level of responsibility carried by the person with the obligation; and
- reflect the possible consequences of failing to comply with the obligation.¹³¹

¹²⁶ Submission No 38—Mr Chris Steel MLA, p [2].

¹²⁷ Submission No 38—Mr Chris Steel MLA, p [2].

¹²⁸ Submission No 38—Mr Chris Steel MLA, p [4].

¹²⁹ Explanatory Statement, Road Transport Legislation Amendment Bill 2021, p 1.

¹³⁰ Submission No 38—Mr Chris Steel MLA, p [2].

¹³¹ Submission No 38—Mr Chris Steel MLA, p. [2].

- 6.61 By way of contrast with the provisions set out in the Bill, the Minister told the Committee that the *Road Transport (Safety and Traffic Management) Act 1999* already contained offences for dangerous driving acts, including furious, reckless and dangerous driving and negligent driving; that these offences were ‘some of the Territory’s most serious offences in its road transport legislation’, and that the majority of these were subject to ‘large court penalties’. The *Crimes Act 1900* defined ‘the most serious culpable driving offences’, for which it set out ‘indictable imprisonment terms’.¹³²
- 6.62 The Minister also suggested that the Bill, ‘as drafted’, could result in a person being charged with the new, and existing, offences at the same time, as the proposed new offence ‘overlapped’ with existing offences.¹³³ A further problem, in his view, was that the present Bill was proposed to commence on the day after notification, and that this would make it difficult to implement the required system changes and to inform police officers ‘of the new offence and its policy intent’, and that these challenges could have ‘a detrimental effect on the overall enforcement of the provision’.¹³⁴
- 6.63 In his submission, the Minister expressed a number of concerns relating to the strict liability applied to two out of three elements of the offence. He noted that this engaged and limited the right to be presumed innocent under the *Human Rights Act 2004*. He also raised questions as to whether the proposed infringement notice penalty was appropriate for the offence defined in the Bill. He said that in general infringement notices were considered appropriate for strict liability offences ‘so that the person issuing the infringement notice does not have to make a judgement about whether an offence has been committed or not’, that is: that ‘the elements of the offence should have a clear yes/no answer’.¹³⁵
- 6.64 The Minister told the Committee that offences which were not considered suitable for infringement notice penalties were those which the following applied to:
- required ‘proof of intention or some other mental element’;
 - where there was ‘a high degree of subjective judgment in determining whether the elements of the offence are made out’;
 - where ‘the evidence of the commission of the offence [was] not readily apparent without further inquiry’; and
 - were ‘serious in nature and to which a substantial penalty [was] attached’, particularly ‘where the penalty may include a period of imprisonment’.¹³⁶

¹³² Submission No 38—Mr Chris Steel MLA, p. [3].

¹³³ Submission No 38—Mr Chris Steel MLA, p. [2].

¹³⁴ Submission No 38—Mr Chris Steel MLA, p. [3].

¹³⁵ Submission No 38—Mr Chris Steel MLA, p [3].

¹³⁶ Submission No 38—Mr Chris Steel MLA, p [3].

- 6.65 The Minister told the Committee that the offence proposed in the Bill contained a ‘fault’ or ‘mental’ element of negligence and may not be consistent with the principles set out for offences for which infringement notices were appropriate, and that determining whether a person was driving negligently may require consideration of ‘a range of factors’ so that it may not be appropriate to be dealt with as a strict liability offence or infringement notice and ‘may be better dealt with by the courts’.¹³⁷
- 6.66 Other submissions also made comment on strict liability and infringement notices as provided for in the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2).
- 6.67 Pedal Power ACT supported these aspects of the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2). They told the Committee that infringement notices would allow ‘matters to be dealt with expeditiously’: the victim could be ‘reassured’ that ‘the legal system has dealt with the offender’ and that the offender ‘need not incur the time and expense of court appearances’, but nevertheless retained ‘the safeguard of contesting the offence before a court’ if they wished.¹³⁸
- 6.68 Pedal Power ACT noted that Section 22 of the *Human Rights Act 2004* set out rights relating to accused people in criminal proceedings. Section 22(1) provided that those charged with a criminal offence had the right to be presumed innocent until proven guilty according to law, and that the Bill limited this right by providing a traffic infringement notice penalty for the offence, which allowed a person to be penalised without being tried.¹³⁹
- 6.69 However, Pedal Power ACT noted this was mitigated because of the following:
- the person was ‘not deemed guilty of an offence’;
 - issuing an infringement notice supported the principle of S22(2)(c), that ‘an accused person must be tried without unreasonable delay’;
 - there was a right to ‘dispute the notice in court’; and
 - persons experiencing difficulties in paying fines could apply for an Infringement Notice Management Plan.¹⁴⁰
- 6.70 In light of this, Pedal Power ACT considered, in their view, that the new offence was ‘proportional and legitimate’, and addressed ‘a known gap in our legislation’.¹⁴¹

¹³⁷ Submission No 38—Mr Chris Steel MLA, p [3].

¹³⁸ Submission No 25—Pedal Power ACT, p 5.

¹³⁹ Submission No 25—Pedal Power ACT, p 5.

¹⁴⁰ Submission No 25—Pedal Power ACT, p 5.

¹⁴¹ Submission No 25—Pedal Power ACT, p 5.

- 6.71 Pedal Power ACT also noted that it was important that those taking on the ‘significant responsibility of driving a vehicle’ did it with ‘sufficient care’. Existing laws did not ‘sufficiently prevent harm to Vulnerable Road Users’, and did not ‘contribute to a culture of safety’. Therefore, the new offence was needed, and the community expected police to be able to respond to such offences ‘swiftly’ by issuing infringement notices.¹⁴²
- 6.72 Mr Paul Brunton, in his submission, told us that he thought there was a gap in current law, that he supported the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2) creation of an offence of negligent driving that harms Vulnerable Road Users, and that the Bill would contribute to behavioural change. He thought the best way to achieve this behavioural change was ‘for penalties to be kept out of courts and for the police to have the power to impose penalties by issue of infringement notices’. These measures, he told us, would ‘streamline the process and bring the consequences closer to the commitment of the offence’, and to achieve this, ‘penalties should be limited to fines and loss of license points’. Other penalties to be imposed by courts would take longer and therefore ‘be less immediate and may not result in behaviour change and protection of Vulnerable Road Users in the longer term’. Court processes were also ‘more expensive for all concerned’, and there was a risk that many cases may not result in convictions, which would defeat the purpose of the Bill.¹⁴³

¹⁴² Submission No 25–Pedal Power ACT, p 6.

¹⁴³ Submission No 22–Mr Paul Brunton, p [1].

7 PUBLIC HEARING—4 NOVEMBER 2021

- 7.1 The Committee held a public hearing for Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2) and Road Transport Legislation Amendment Bill 2021 on 4 November 2021. Witnesses who appeared before the Committee are listed at Appendix B. Transcripts from the hearings are available on the Assembly website.¹⁴⁴ Footage of the hearings is available via video on demand on the Legislative Assembly website.¹⁴⁵
- 7.2 The Committee invited the Minister for Transport and City Services and officials, community members and industry groups. The following groups appeared at the hearing:
- Pedal Power ACT and We Ride Australia;
 - Australian Federal Police Association (AFPA);
 - ACT Law Society;
 - Beam (e-scooters);
 - Individual community members; and
 - Minister for Transport and City Services and officials.

THE BILLS

- 7.3 Mr Chris Steel MLA, Minister for Transport and City Services outlined the main differences between the two Bills in:
- scope the Government Bill (the Road Transport Legislation Amendment Bill 2021) covers any road user who is harmed, this includes passengers in vehicles¹⁴⁶ while the Private Members' Bill (PMB) (the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2)) only applies when 'negligent driving results in harm to a Vulnerable Road User.'¹⁴⁷
 - penalties under the Government Bill offences will be processed through the court while the PMB has 50 penalty units, a TIN of \$1600 and 3 demerit points;
 - strict liability offences the PMB applies this liability to two of the three offences, and 'in doing so, it engages and limits the right to be presumed innocent under the HRA; and

¹⁴⁴ Available at <https://www.hansard.act.gov.au/hansard/2021/comms/default.htm>

¹⁴⁵ Available at <https://aod.parliament.act.gov.au/>

¹⁴⁶ Mr Chris Steel MLA, Proof Transcript of Evidence, 4 November 2021, p 37.

¹⁴⁷ Mr Chris Steel MLA, Proof Transcript of Evidence, 4 November 2021, p 36.

- Criminal Code the PMB applies a code to the new offence, this does not exist in the current framework and therefore introduces a higher standard of negligence than currently applies to negligence driving offences.¹⁴⁸
- 7.4 Mr Ian Ross, Chief Executive Officer (CEO), Pedal Power ACT indicated that they would like both Bills enacted, however felt that the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No. 2) would have the most impact in changing behaviours on the ACT's roads.¹⁴⁹
- 7.5 Mr Alex Caruana, President, Australian Federal Police Association (AFPA) noted that:
- the importance of creating this new legislation is to make it very clear, abundantly clear, to road users—both Vulnerable Road Users and non-Vulnerable Road Users, and police officers—that this is what the expectations are, this is what the fine is going to be and this is what the options are for the police officer enforcing the new legislation.¹⁵⁰
- 7.6 Mr Caruana stated that the AFPA supports both Bills and would like to see them combined into one piece of legislation.¹⁵¹

CONSULTATION DRAFT AMENDMENT TO THE ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2021

- 7.7 Mr Chris Steel MLA, Minister for Transport and City Services provided the Committee with a draft amendment, he noted that it is subject to Cabinet approval process and needs to go to the JACS Scrutiny Committee:
- it is not the final amendment that will be provided to the Assembly, but it does provide an important lower-level rung for the hierarchy of road transport offences that are currently in the Act. The amendments seek to introduce another tier of offence to the dangerous driving hierarchy related to due care, attention and reasonable consideration.¹⁵²

¹⁴⁸ Mr Chris Steel MLA, Proof Transcript of Evidence, 4 November 2021, p 37.

¹⁴⁹ Mr Ian Ross, Proof Transcript of Evidence, 4 November 2021, pp 1–2

¹⁵⁰ Mr Alex Caruana, Proof Transcript of Evidence, 4 November 2021, p 7.

¹⁵¹ Mr Alex Caruana, Proof Transcript of Evidence, 4 November 2021, p 9.

¹⁵² Mr Chris Steel MLA, Proof Transcript of Evidence, 4 November 2021, p 33.

OFFENCES AND PENALTIES

7.8 The Minister noted that the key difference between the Bills is that the Road Transport Legislation Amendment Bill 2021 and its proposed amendment is that the Government is increasing the ‘hierarchy of road traffic offences, particularly for negligent driving occasioning various levels of harm.’¹⁵³

7.9 Acting Commander Ms Corey Heldon stated:

I would say is that there is definitely a benefit to having the traffic infringement notice arrangement for lower tier offences. They are strict and absolute. You go through a red light; you get a TIN. There is nothing to be proven there ... [f]or those other elements which have that subjectivity to them, in terms of trying to prove negligence, for example, there is arguably a requirement for the court to make those determinations, because it is based on behavioural aspects et cetera, as opposed to “strict and absolute” under the TIN arrangements.¹⁵⁴

7.10 Acting Commander Heldon stated that it is not appropriate for police officers to determine ‘proportionality’ of negligence offences.¹⁵⁵ She notes also that some harms arrive later, for example psychological harm.

7.11 The Minister reinforced this view, stating:

TINs are typically only applied where we have offences that are black and white, where there are really only physical elements present. When you include things like mental elements, fault elements—where there is a very high level of subjectivity that needs to be proven—and then you are talking about offences which have been ratcheted up, we think this is very serious. The more serious the offence, the greater the evidence that needs to be provided to prove that offence by both the police and the DPP. Because we are actually proposing an imprisonment term in the Government’s bill, it is ratcheting up the higher level and it would be inappropriate to put it into that context.’¹⁵⁶

7.12 Mr Ian Ross, CEO, Pedal Power ACT, in his opening statement said that:

Pedal Power intensely campaigned for improvements to our road transport legislation after a bike rider was injured last year. The at-fault driver was charged, and we saw a relatively small fine of \$393. After that incident, the whole issue of negligent driving became much more of an issue for us and we began to receive people’s stories about

¹⁵³ Mr Chris Steel MLA, Proof Transcript of Evidence, 4 November 2021, p 34.

¹⁵⁴ Ms Corey Heldon, Proof Transcript of Evidence, 4 November 2021, p 35.

¹⁵⁵ Ms Corey Heldon, Proof Transcript of Evidence, 4 November 2021, p 36.

¹⁵⁶ Mr Chris Steel MLA, Proof Transcript of Evidence, 4 November 2021, p 39.

their experiences of car accidents, car crashes, negligence and the outcomes from that. We found significant gaps.¹⁵⁷

7.13 Mr Stephen Hodge, Director, National Advocacy, We Ride Australia supported the view that penalties need to be immediate, an on-the-spot infringement confirms that the driver has not taken due care on the road to avoid injury to a Vulnerable Road User.¹⁵⁸ He also notes that it is better to try and get behaviour change without burdening the judicial system.

7.14 Mr Alex Caruana, AFPA reported that police officers would also like powers to be able to give infringement notices to vulnerable road users, as they are sometimes also at fault, it needs to go both ways.¹⁵⁹ He also noted a gap existed between a standard negligent driving charge and negligent driving causing grievous bodily harm, and the ability for an officer to make a decision on-the-spot by issuing an Traffic Infringement Notice (TIN) is an important factor and will also free up courts.¹⁶⁰

7.15 Mr Troy Roberts, Media and Government Relations Manager, AFPA noted that:

The beauty about the TIN, for us, is that the matter can be resolved—or not resolved, but there is an outcome on the spot. As you said in your question, if someone wishes to appeal that TIN, there is a process already in place to do that. They can have their day in court; they can explain their circumstances.¹⁶¹

7.16 Mr Michael Kukulies-Smith, Chair of the Criminal Law Committee, ACT Law Society noted that there is a cost benefit analysis considered by offenders in relation to TIN's and if they end up in the judicial system. He suggested that in his experience penalties over \$1200-\$1500 would start to see people challenge the TIN in Court.¹⁶²

7.17 Mr Kukulies-Smith also questioned how the police would determine negligent driving causing actual bodily harm, it will be an officer's discretionary choice, and some harm, for example near misses can also be considered as an offence. He also indicated that the ACT Law Society acknowledges there is currently a gap between negligent driving and grievous bodily harm.¹⁶³

¹⁵⁷ Mr Ian Ross, Proof Transcript of Evidence, 4 November 2021, p 1.

¹⁵⁸ Mr Stephen Hodge, Proof Transcript of Evidence, 4 November 2021, p 3.

¹⁵⁹ Mr Alex Caruana, Proof Transcript of Evidence, 4 November 2021, pp 8–9.

¹⁶⁰ Mr Alex Caruana, Proof Transcript of Evidence, 4 November 2021, p 8.

¹⁶¹ Mr Troy Roberts, Proof Transcript of Evidence, 4 November 2021, p 9.

¹⁶² Mr Michael Kukulies-Smith, Proof Transcript of Evidence, 4 November 2021, p 13.

¹⁶³ Mr Michael Kukulies-Smith, Proof Transcript of Evidence, 4 November 2021, p 15.

- 7.18 Mr Christopher Budd notes that there is an issue ‘about the police culture of issuing infringement notices. The laws are great, but if they are not enforced then they are fairly meaningless.’¹⁶⁴ He also raised concerns about the idea of TIN’s for Vulnerable Road Users¹⁶⁵ which was supported by Mr Michael Watson who stated:

where there is an inequality, you can adjust the tariff to reflect the human harm—the bike or the pedestrian who gets splattered—but the person in the large car is not going to get harmed. Therefore the person who has the greater potential to harm should have a higher duty of care in the negligence context.¹⁶⁶

- 7.19 Mr Budd noted that by having a TIN ‘that specifically applies to Vulnerable Road Users, it would send a clear signal to everyone, including the police, that that is the appropriate thing to issue in those circumstances and they would feel more comfortable to issue it.’¹⁶⁷ He also noted it ‘would really be nice to have a strict liability offence of some sort that they could just default to. It could be a very little one; \$300 and one demerit point would be fine, just something that they feel more confident to issue.’¹⁶⁸

EDUCATION

- 7.20 Mr Ian Ross, Chief Executive Officer (CEO), Pedal Power ACT stated that it is important that there are targeted education campaigns to specifically encourage people to take care around Vulnerable Road Users.¹⁶⁹ He also notes that we are all Vulnerable Road Users at some time, this is not just a cycling issue, it includes motorbike riders and pedestrians.¹⁷⁰
- 7.21 Mr Michael Kukulies-Smith, ACT Law Society noted that education is always important, it is about making road users aware of the risks as most offenders do not set out to specifically break the law. A typical negligent driver is someone who might be on their mobile phone or are distracted by a child or another car occupant, and then fail to stop or give way at an intersection.¹⁷¹

¹⁶⁴ Mr Christopher Budd, Proof Transcript of Evidence, 4 November 2021, p 24.

¹⁶⁵ Mr Christopher Budd, Proof Transcript of Evidence, 4 November 2021, p 25.

¹⁶⁶ Mr Christopher Budd, Proof Transcript of Evidence, 4 November 2021, p 25.

¹⁶⁷ Mr Christopher Budd, Proof Transcript of Evidence, 4 November 2021, p 26.

¹⁶⁸ Mr Christopher Budd, Proof Transcript of Evidence, 4 November 2021, p 26.

¹⁶⁹ Mr Ian Ross, Proof Transcript of Evidence, 4 November 2021, p 4.

¹⁷⁰ Mr Ian Ross, Proof Transcript of Evidence, 4 November 2021, pp 4–5.

¹⁷¹ Mr Michael Kukulies-Smith, Proof Transcript of Evidence, 4 November 2021, p 17.

- 7.22 Mr Tom Cooper, Bean ANZ General Manager, indicated that they focused heavily on education. They have worked closely with Minister Steel on a campaign for operators of shared mobility devices. Beam also runs safety days where people are invited along to do a defensive driving course. Mr Cooper indicated that Beam is happy with the Government's Road Transport Legislation Amendment Bill 2021.¹⁷²
- 7.23 Ms Clare de Castella Mackay raised the issue of how we are educating drivers, particularly those who got their licences many years ago. She noted that there were four signs on the road leading to her accident site saying "cyclists have priority here" yet a car still cut in front of her causing an accident.¹⁷³ She also notes that 'there is very little education on cycling for the general population. At the moment, as a cyclist, it is easier to get lessons to teach you how to drive than it is to learn to cycle safely.'¹⁷⁴

INFRASTRUCTURE

- 7.24 Mr Christopher Budd notes there is a need for a long-term solution, involving proper, separate infrastructure. He stated:

The context is the power dynamic. The road infrastructure—which includes not only physical but also cultural and legal infrastructure—has been built in the interests of motor vehicle users by people who are predominantly motor vehicle users, and for the benefit of motor vehicle users, over a long period of time—several decades. Motor vehicles hold all of the power in the system, and that power disparity is the underlying cause of harm to Vulnerable Road Users. Until we really get at that, as an issue of cultural change, the issue will not be fixed.¹⁷⁵

- 7.25 Mr Michael Watson supported this view, noting:

We have a situation where there is increasing diversity in the evolving environment, where we are going to have a wider variety of people who want to move around the city. It will not just be bikes versus cars; you will have electric scooters and an increasing diversity of ways that people get around.¹⁷⁶

¹⁷² Mr Tom Cooper, Mean ANZ General Manager, Proof Transcript of Evidence, 4 November 2021, p 19.

¹⁷³ Ms Clare de Castella Mackay, Proof Transcript of Evidence, 4 November 2021, p 22.

¹⁷⁴ Ms Clare de Castella Mackay, Proof Transcript of Evidence, 4 November 2021, p 24.

¹⁷⁵ Mr Christopher Budd, Proof Transcript of Evidence, 4 November 2021, p 23.

¹⁷⁶ Mr Michael Watson, Proof Transcript of Evidence, 4 November 2021, p 23.

7.26 Mr Watson also noted the use of the cycle path from Dickson, through O'Connor to Bruce Ridge. It is heavily used, safe infrastructure, and 'if you build good infrastructure, it works and it will save lives.'¹⁷⁷

¹⁷⁷ Mr Michael Watson, Proof Transcript of Evidence, 4 November 2021, p 31.

8 COMMITTEE COMMENT

- 8.1 In general, submissions and the public hearing witnesses showed that Vulnerable Road Users saw a need for the legislative arrangements proposed in both Bills.
- 8.2 The Committee heard that the Government's Road Transport Legislation Amendment Bill 2021 was supported by stakeholders through the Government consultation process, and by submissions and witnesses at the public hearing.
- 8.3 In relation to the Road Transport (Safety and Traffic Management) Amendment Bill (No. 2) a reasonable summary is to say that these arrangements are made up of three main components:
- the creation of a middle-ground offence for negligent harms to Vulnerable Road Users that would occupy the perceived gap between the higher-tier offences set out in Section 7A of the [Road Transport \(Safety and Traffic Management\) Act 1999](#) and lower-tier offences set out in Section 6(1)(c) of same Act prohibiting negligent driving which falls short of causing death or grievous bodily harm;¹⁷⁸
 - the application of strict liability for two of three elements of the offence; and
 - the creation of an infringement notice penalty for the offence.
- 8.4 The first of these is unexceptional; the overwhelming majority of people engaging with the inquiry saw a need for a middle-tier offence to protect Vulnerable Road Users.
- 8.5 The second and third components are, of course, linked; it would not be possible to issue an infringement notice for the offence if strict liability were not applied.
- 8.6 However, the novel construction of the offence, for which two out of three elements have strict liability applied, presents some challenges.
- 8.7 First, it is open to question whether the offence can be considered to be one of strict liability since it contains a fault element regarding negligent behaviour. While Scrutiny Report No 7¹⁷⁹ canvasses other offences which include negligence but don't appear to require *mens rea*, this construction may import a problem by requiring a police officer to make what is, in effect, a subjective judgement on what constitutes negligent driving before they issue an infringement notice.

¹⁷⁸ Explanatory Statement, Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2), p.2.

¹⁷⁹ Scrutiny Report 7, 27 July 2021, pp7–8

- 8.8 Second, as the Scrutiny Report No 7 states, to bring some practicability to the offence there should be clear statement as to what negligence is, and to which of the physical elements the fault element applies.
- 8.9 Third, noting that other offences involving negligent driving require adjudication by the courts, and require those courts to assess negligence in a more nuanced approach, taking into account the conditions under which the event took place, in order to establish negligence, it is possible that this offence is inherently suited to being considered by a court rather than an officer who issues an infringement notice.
- 8.10 Fourth, the high financial penalty set out for the infringement notice would seem to place the offence in a higher-tier band of offences which warrant the adjudication of the courts.
- 8.11 Fifth, although there would be a high financial penalty attached to the infringement notice, there could be a strong incentive, noting the higher range possible under the specified penalty points, for persons issued with an infringement notice to pay the notice rather than contest the matter in the courts. If so, this would engage one of the concerns set out by the Australian Law Reform Commission (ALRC), and noted by the Senate Standing Committee for the Scrutiny of Bills and the Standing Committee on Legal Affairs, regarding the ‘the risk that innocent people will pay the infringement notice penalty to avoid the expense of contesting proceedings’.¹⁸⁰
- 8.12 We consider that there are two paths out of this dilemma. One is to remove strict liability and the infringement notice, and have offence adjudicated by the courts. The other is to specify the standard of negligence to be applied in the first element of s 5A, and to specify to which physical element/s the fault element applies.
- 8.13 Of these, the second would appear to be more challenging, given that all three elements must evaluate as ‘true’ to constitute the offence, and given apparent confusion about the fault element. By a process of logic, if all must be true and one is not subject to strict liability, it is open to question as to whether a threshold can be reached at which point it would be appropriate to issue an infringement notice.

¹⁸⁰ Senate Standing Committee for the Scrutiny of Bills, Sixth Report of 2002, *Application of Absolute and Strict Liability Offences in Commonwealth Legislation*, pp.273-274, citing the Australian Law Reform Commission (ALRC) report on *Customs and Excise* (1992), and the New South Wales Law Reform Commission, discussion paper on *Sentencing* (1996), viewed 6 August 2021, available at: <https://www.aph.gov.au/binaries/senate/Committee/scrutiny/bills/2002/b06.pdf> and cited in Standing Committee on Legal Affairs, *Strict and Absolute Liability Offences*, pp.5-6.

Recommendation 1

8.14 The Committee recommends that the Road Transport Legislation Amendment Bill 2021 be passed by the Assembly.

Recommendation 2

8.15 The Committee recommends that the following matters regarding the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2) be addressed including:

- the application of Strict Liability Offences to offences which under the current drafting have a level of subjectivity in their application and noting it is unusual for TIN's to apply to an offence where subjectivity is required;
- a clearer definition of harm which takes into account current common law definitions of harm and that considers the scope of what is reasonable to assess at the time of an offence and that as drafted a TIN may be issued before all harm can be adequately assessed;
- greater consideration to how fault and negligence will be determined under the bill noting the amendment as drafted departs from current practice for determining fault and negligence for offences that cause harm through the court system where legal fairness can be better applied;
- reconsideration of 5D (1) (b) to acknowledge that harm to vulnerable road users is not only caused by motor vehicles as currently defined in the Bill;
- demonstrating consistency with other offences and how the penalties as drafted will be consistent with principles underpinning the offence hierarchy;
- balancing the penalties for all road users in line with the *Human Rights ACT 2004*; and
- clarification of the commencement date for the provisions of the Bill.

Recommendation 3

8.16 The Committee recommends that the ACT Government develop an education campaign about the safety of Vulnerable Road Users.

Recommendation 4

8.17 The Committee recommends that the ACT Government provide more dedicated infrastructure for Vulnerable Road Users.

Suzanne Orr MLA

Acting Chair

18 November 2021

APPENDIX A – SUBMISSIONS

Submission Number	Submitter	Received
1	Mr Gerard Gough	17.07.21
2	Mr Ian Diversi	19.07.21
3	Ms Alex O'Brien	21.07.21
4	Ms Leela Ross	21.07.21
5	Mr John Mason	22.07.21
6	Ms Sharyn Foo	23.07.21
8	Mr Roger Bacon	23.07.21
9	Mr Gary Fan	23.07.21
10	Ms Carolyn Hawkins	23.07.21
11	Mr Ross Ford	23.07.21
12	AusCycling	23.07.21
13	Ms Dominica van der Ploeg	24.07.21
14	Mr John Widdup	24.07.21
15	Mr Daniel Riccardo	25.07.21
16	Mr Quentin Leseney	26.07.21
17	Mr Matthew Busch	26.07.21
18	Mr Christopher Budd	26.07.21
19	Mr Mike Jackson	26.07.21
20	Mr Michael Watson	27.07.21
21	Ms Karen Hamilton	27.07.21

Submission Number	Submitter	Received
22	Mr Paul Brunton	27.07.21
23	Mr Jeff Ibbotson	28.07.21
24	Mr Robert Dalitz	28.07.21
25	Pedal Power ACT	28.07.21
26	AFPA	29.07.21
27	30Please	29.07.21
28	Mr Richard Bush	29.07.21
29	Ms Sarah Todd	29.07.21
30	Ms Clare de Castella Mackay	29.07.21
31	Ms Helen Woittiez	29.07.21
32	Mr Kip Tanner	30.07.21
33	Weston Creek Community Council	30.07.21
34	Living Streets Canberra	30.07.21
35	Mr Harold Marshall and attachments	30.07.21
36	Mr Sean Minney	30.07.21
37	Mr Stephen Ryan	30.07.21
38	ACT Government	30.07.21
39	We Ride Australia	30.07.21
40	Mr Greg Berry	30.07.21
42	Mr Paul Magarey	02.08.21
43	Ms Ulrike Ross	26.09.21
44	Ms Jessica Avalon	04.10.21

Submission Number	Submitter	Received
45	Beam	07.10.21
46	Weston Creek Community Council	15.10.21

APPENDIX B – WITNESSES

- Mr Stephen Hodge, Director, National Advocacy, We Ride Australia
- Mr Ian Ross, CEO, Pedal Power ACT
- Mr Alex Caruana, President, Australian Federal Police Association (AFPA)
- Mr Troy Roberts, Media & Government Relations Manager, Australian Federal Police Association (AFPA)
- Mr Michael Kukulies-Smith, Chair of the Criminal Law Committee, ACT Law Society
- Mr Tom Cooper, Beam ANZ (Aust/New Zealand) General Manager
- Mr Edward Dale, Beam Canberra City Lead
- Community panel—Ms Clare de Castella Mackay, Mr Christopher Budd, Mr Michael Watson and Mr Jeff Ibbottson
- Mr Chris Steel MLA, Minister for Transport and City Services
- A/Commander Ms Corey Heldon, Operations, ACT Policing
- Mr John Bowdery, Executive Branch Manager, Strategic Policy and Customer, TCCSD

DISSENTING REPORT – MS JO CLAY MLA

Planning, Transport and City Services Committee Inquiry into the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2) and Road Transport Legislation Amendment Bill 2021

Introduction

The Committee inquired into two bills before the Legislative Assembly:

- Road Transport (Safety and Traffic Management) Amendment Bill (No 2) (the Clay Bill); and
- Road Transport Legislation Amendment Bill 2021 (the Government Bill).

I disagree with Committee Recommendation 1. I think the Government Bill should be passed but not in its current form.

Instead, I think the Government Bill should be amended to:

- include a Traffic Infringement Notice for the offence of negligent driving causing actual bodily harm with a penalty set in range of \$900 - \$1,200; and
- include in the new hierarchy of offences special protection for Vulnerable Road Users, in addition to protection for all road users.

If passed unamended, I am concerned that the Government Bill will not meet its stated aim of improving road safety and strengthening the regulatory and enforcement framework as it will not be enforced in practice.

I otherwise support Committee Recommendations and note my appreciation for the cooperative and constructive work of this Committee.

Traffic Infringement Notice versus Court Prosecution

Section 6 in the existing *Road Transport (Safety and Traffic Management) Act 1999* (the Act) sets out a range of penalties for negligent driving:

- negligent driving occasioning death—200 penalty units/2 years prison or both;
- negligent driving occasioning grievous bodily harm—100 penalty units/1 year prison or both; and
- negligent driving—20 penalty units/traffic infringement notice of \$393 plus 3 demerit points.

The Act does not contain any offence of negligent driving that causes actual harm. This means that if a person is injured through negligent driving but those injuries fall short of grievous bodily harm, the only applicable penalty is a \$393 fine plus 3 demerit points.

There was widespread community outrage at a recent incident in which a person who drove negligently and injured a Vulnerable Road User received a \$393 fine. Of the 46 submissions received to this inquiry, the vast majority mirrored that outrage. A low fine for driving negligently and causing harm to a person does not meet community expectations and does not encourage road safety and careful driving.

Both Bills address this shortcoming. The Government Bill states its aim as 'to improve road safety by strengthening the Territory's regulatory and enforcement framework for dangerous driving and other unsafe behaviours on the Territory's road network'.

The Government Bill proposes two key changes.

- Increase the lowest penalty for a Traffic Infringement Notice from \$393 up to \$598; and
- Introduce a new offence of negligent driving occasioning actual bodily harm with a penalty of 50 penalty units and/or 6 months imprisonment, which is only enforceable via a court prosecution.

The Clay Bill proposes a new Traffic Infringement Notice penalty for negligent driving that causes actual harm of 50 penalty units, which is enforceable via a Traffic Infringement Notice of \$1,600 plus 3 demerit points.

Why impose a Traffic Infringement Notice instead of court-only prosecution?

Community members, Pedal Power ACT, We Ride Australia, the Australian Federal Police Association and the ACT Law Society all suggested that applying a Traffic Infringement Notice was preferable to requiring all matters to be prosecuted in court.

In summary, they gave the following reasons.

- It spared the offender the time and expense of a court appearance.
- It streamlined the process and brought consequences closer to commitment of the offence.
- It saved police and court resources and cost.
- It achieved behaviour change without burdening the judicial system.
- It retained the safeguard of allowing an offence to be contested in court.
- It was proportional, given the behaviour it targeted and the harm it avoided.
- It made it abundantly clear to Vulnerable Road Users, non-Vulnerable Road Users and police officers that the offence will be enforced and the fine will be \$1,600.
- It provided more effective deterrence than court prosecution only, because only a small number of road matters are ever prosecuted in court and these matters are unlikely to be prosecuted.
- The swift, certain fines are better deterrence and are consistent with other road fines, such as drink and drug driving, speeding, mobile phone use and seatbelt non-use.

The Government Bill provides examples of 'actual bodily harm' which include deep bruising, cuts and abrasions and a sprained ankle. Given the evidence received from victims of previously unenforced road incidents, ACT Policing, the Australian Federal Police Association, the ACT Law Society and the Director of Public Prosecutions, I find it unlikely that the police and courts have the resources and will choose to mount a prosecution and run judicial hearings for injuries of this nature. If a court prosecution is required, it is more likely that the offence will not be enforced.

Do police need to apply too much discretion to impose a Traffic Infringement Notice?

Negligent driving contains an element of discretion in determining if it has occurred, which is one argument against applying a Traffic Infringement Notice. However, the existing offence of negligent driving contains the same element of discretion about intent as the new offence of negligent driving occasioning actual bodily harm. The Government Bill retains this existing negligent driving offence and in fact increases the Traffic Infringement Notice penalty, showing that Traffic Infringement Notices are sometimes considered proportionate for roads offences involving an element of discretion.

Does a Traffic Infringement Notice impinge unreasonably on a perpetrator's rights?

Evidence was given that the Director for Public Prosecutions had a strong preference for Traffic Infringement Notices for road traffic offences. To quote:

"It is not really a matter of rights. If a matter proceeds by way of infringement notice rather than by way of summons, the person has the right to pay it there and then. That means there are all sorts of ongoing benefits with that...;

Acting Commander Heldon for ACT Policing told the Committee as follows:

'TINs [Traffic Infringement Notices] are a very useful mechanism, as I said before, particularly for the lower tier offences, where it is a very streamlined process. But it does give that person who has been issued with a TIN the option of going to court if they feel strongly that they should dispute that TIN, whatever the reason may be. That affords them that right. It is always important, I believe, that people have options and have those rights that they can exercise. So that does give them that right to do that. Equally, if it is a higher tier offence and they go to court, they also have that right to defend their position in court. I think that either way their rights are assured, whether it is through the acknowledgement of the strict and absolute—they pay the TIN—or, if they wish to dispute it, they have that option of going to court and having their day in court, as it were.'

What penalty should apply for a Traffic Infringement Notice?

Most submitters found the existing penalty of \$393 for negligent driving occasioning actual harm grossly inadequate. The Clay Bill and the Government Bill both acknowledge that this existing penalty falls short of community standards and does not support road safety.

A quick review of the Road Transport (Offences) Regulation 2005 shows a range of higher level Traffic Infringement Notice penalties, including:

- \$917 (using uninsured motor vehicle on road);
- \$1,841 (speeding more than 45 km/h over the speed limit in a non-school zone); and
- \$2,136 (speeding more than 45 km/h in a school zone).

While 'negligent driving' is seen as one of the lower end offences, none of the offences involve causing actual harm to a person, so in many respects they are less serious than negligent driving that causes actual harm.

Ms de Castella Mackay told of her experience of being injured where the driver received two Traffic Infringement Notices totalling around \$700. She found this 'vastly inadequate' because the driver, through her negligence, had caused 'considerable pain and distress'.

The Minister raised questions about proportionality for penalties.

Mr Michael Kukulies-Smith, Chair of the Criminal Law Committee for the ACT Law Society, noted that when it comes to proportionately, it 'ultimately is a matter for the Assembly to determine where it thinks the penalty should be.' Mr Kukulies-Smith further noted that offenders apply a cost benefit analysis in relation to Traffic Infringement Notices and that in his experience, penalties at around the \$1,200 - \$1,500 start to see people challenge a Traffic Infringement Notice in court.

On this basis, a penalty in the range of \$9,000 - \$1,200 would better meet community standards, suit the serious nature of negligent driving that causes actual harm, conform with the range of existing Traffic Infringement Notice penalties and avoid burdening the courts with multiple legal challenges.

Should there be special protection for Vulnerable Road Users?

Most submitters and witnesses wanted special protection for Vulnerable Road Users.

Evidence received and presented confirm that for the most part, our roads are getting safer except for Vulnerable Road Users. Road safety for motorists is improving but almost half of serious road injuries and more than one-third of road deaths were suffered by Vulnerable Road Users.

Paragraph 8.1 of the Committee Report notes that 'submissions and the public hearing witnesses showed that Vulnerable Road Users saw a need for the legislative arrangements proposed in both Bills.'

Minister Steel noted that the 2020 ACT Road Crash report showed that in 2020, two fatalities and 190 injuries occurred involving Vulnerable Road Users. This represented 29% of fatalities and 31% of injuries that occurred in 2020. Vulnerable Road Users continue to be overrepresented in road casualty statistics.

All evidence indicates that Vulnerable Road Users are in a different position from other road users and need special protection. The Act recognises this as Section 7A already contains special provisions defining and protecting Vulnerable Road Users. Unfortunately, Section 7A only applies to furious, reckless or dangerous driving, which is not statistically the most significant type of incident that affects Vulnerable Road Users. Negligent driving is the much more frequent behaviour encountered by Vulnerable Road Users.

The Clay Bill seeks to extend this existing protection to cover Vulnerable Road Users for the more common incidents that occur in practice. The Government Bill omits all mention of Vulnerable Road Users.

Given the inciting incident and stated purpose for both bills and the overwhelming evidence submitted, the new hierarchy of offences in the Government Bill should provide special protection for Vulnerable Road Users in addition to protection for general road users.

Clarification - Penalty in the Clay Bill is \$1,600 + 3 demerit points

Paragraphs 2.13 to 2.15 and paragraph 7.3 variously state the penalty in the Clay Bill as \$1,600 plus 3 demerit points, and \$8,000 plus 3 demerit points. This may confuse those unfamiliar with penalty provisions. To clarify, the penalty in the Clay Bill that applies to the Traffic Infringement Notice is \$1,600 plus 3 demerit points, not \$8,000.

Jo Clay
Member for Ginninderra
Chair of the Planning, Transport and City Services Committee
Sponsor of the Clay Bill
29 November 2021