



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

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Submission Cover Sheet



Inquiry into Dangerous Driving

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Inquiry into Dangerous Driving

Personal Submission

	
	
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Thank you for conducting this inquiry into dangerous driving in the ACT. Due to time constraints, I have not been able to put together the comprehensive response to this inquiry that I was hoping to submit. Instead I offer a summary of deaths per VKT statistics found in the BITRE Road Trauma Australia Summary for 2021 which highlights a concerning increase in road trauma in the ACT. Followed by a section of my response to the National Road Safety Strategy in 2021 discussing risk homeostasis, then examining the exceptionally light penalties typically issued to motorists who injure or kill. When factoring in risk homeostasis theory, the typically lenient punitive response for motorists who kill or injure others in the ACT, is not an adequate deterrent to reduce dangerous driving behaviours.

1 Deaths per VKT Summary

- A claim I have regularly heard made by ACT Government officials is that the ACT has the safest roads per capita in the country. This is technically true, but it is exceptionally misleading.
- The Australian Statistical Geography Standard categorises Canberra and our suburbs as “Major City” areas. Australia-wide, traffic collisions in major cities are 90% less likely per capita, than traffic collisions in remote Australia.
- While the ACT’s road toll is relatively low per capita, this is exclusively due to the ACT being largely a city state, where high speed and serious traffic collisions should be less likely to occur.
- The traditional messaging from the ACT Government regarding ACT roads being the safest in the country per capita is misleading and dangerous. The messaging may have established complacency both within government agencies, and amongst ACT drivers.
- Excessive vehicle speed remains one of the leading causes of collisions in the ACT, and yet, two thirds of ACT drivers believe that speed limit enforcement is about revenue.
- Motorists who do not properly appreciate the risks associated with driving fast or in an otherwise dangerous manner are more likely to drive dangerously.
- The ACT has experienced an increase in road deaths per vehicle kilometres travelled (VKT) in the past 10 years.
- With the exception of Tasmania, all other Australian jurisdictions have experienced decreases in road deaths per VKT in the same time period.
- 10 years of data shows the ACT’s road deaths per VKT rate is trending upwards faster than any other Australian jurisdiction.

- As the ACT is effectively a city state, our road safety record should be significantly better than all other Australian jurisdictions, yet our deaths per VKT rate has been increasing and is now approaching parity with NSW and Victoria.
- 11 road deaths were recorded in the ACT in 2021. As of September 30th 2022, the ACT has already recorded 12 road deaths, as such;
- The ACT's deaths per VKT rate in 2022 will be higher than last year, seeing our average deaths per VKT rate increase again.

The ACT's Roads have become quantifiably more deadly over the past 10 years. During this time, the risk of dying while using public roadways in the ACT has increased at a higher rate than any other Australian jurisdiction. (BITRE, 2022)

2 Perceived Risk (NRSS Submission)

It is important for all road safety decision makers to understand perceived risk and risk homeostasis (aka risk compensation) theory, then factor those theories when passing laws framing the punitive responses for those who have killed while driving.

Every activity undertaken by every human being includes an element of risk. What is an acceptable level of risk varies from person to person, which goes some way to explaining why some people will never go near an aeroplane, some are happy to jump out of them daily, and most people will fall somewhere in between these two extremes. Risk homeostasis/compensation theory is simple on the surface: if a scenario or system is made safer, people who use the system will unwittingly take additional risks, until they've reached a level of risk they're comfortable with.

Risk homeostasis theory is hotly contested in scientific circles. Unfortunately, there are those who use the theory to conclude there is no point to mandating any road safety improvements, claiming that all safety benefits will be offset by additional risk taken. Thankfully, one only needs to inspect the gradual decline in road trauma that Australia has experienced over the last few decades to conclude that this is not the case. Net improvements in road safety can always be attained with appropriate improvements to safety standards and legislation.

While risk homeostasis theory itself may be contested, how people respond to perceived risk and actual personal risk is more observable.

When Sweden switched from driving on the left-hand side of the road to the right, social and official discussions included ample talk regarding inevitable collisions from motorist confusion. When the switch occurred, road users were wary and cautious due to the perceived risks associated with the switch over. The result: In the three years after switching from left to right hand drive, Sweden saw a statistically significant **decrease** in road deaths. The increase in perceived risk saw motorists take more care, leading to a net positive road safety effect. Unfortunately, as motorists became used to driving on the right-hand side of the road, the perceived risk decreased, and Sweden's road death rate returned to previous levels (Wilde, 1998).

Australia too has an example of a net road safety improvements likely due to increases in perceived risk. Long weekends in Australia are met with a significant increase in vehicle kilometres travelled as we all travel to see family and friends, though in recent

years, this increase in driving has not been met with a increase in road trauma which cannot be explained by natural statistical fluctuations.

While I am yet to find a study which has investigated why this may be, perceived risk can offer some explanation. Holiday periods in Australia have become so synonymous with death and injury that a common phrase to hear over Christmas is “have a **safe** and happy holidays”. News media outlets provide extensive reporting on road deaths during holiday periods. State and territory governments increase penalties for driving offences, whilst also ramping up road safety advertisements and police resources. Several factors combine to see an overall increase in perceived risk whilst driving on long weekends in Australia. Drivers believe the roads are more dangerous, and also understand that additional police and additional penalties mean that anti-social driving is more likely to be detected and will be more severely punished. The increase in perceived risk leads to motorists being more careful on long weekends.

Before Australia can achieve Vision Zero, we must take steps to better understand perceived risk, then strategically use it to adjust motorist behaviour.

3 Penalties (NRSS Submission)

One area where perceived risk must be considered is Australia's extraordinary lenience towards motorists who injure or kill others while driving dangerously. The NRSS must address the systemic perception that road trauma caused by motorists is the result of unfortunate "accidents", rather than the result of criminal negligence. The NRSS must address that decision makers, politicians, police, judges, and magistrates are typically motorists themselves. They may view the actions of a motorist who has killed as the result of a mistake that they could make themselves. This perception may contribute to the lenient penalties for those who kill, injure or endanger others whilst driving in Australia, meaning the risk of legal retribution for the consequences of dangerous driving is not a significant deterrent. For example:

- A motorist fined less than \$400 for deliberately swerving into cyclist (Evans, 2021)
- A motorist sentenced to 200 hours of unpaid community work and fined \$2000, after spending most of her journey using her mobile phone, then killing a cyclist. Likely influencing the lenient sentence, the judge suggested the deceased cyclist had contributed to his own death due to "the apparent focused manner of his cycling" (Croxon & Costelo, 2019). Apparently in Australia, vulnerable road users are blamed for causing their own death when not paying enough attention to the task at hand (SBS, 2018), or when anecdotal evidence indicates they may have been paying too much attention to the task at hand.
- A motorist who was legally drunk, who hit and killed a cyclist, who failed to call emergency services at any stage, rather called his sister and asked her to find him a good lawyer, failed to provide assistance to his victim, told one person who stopped to render assistance to "F*** off ... he's dead." Sentenced to 18 months prison before being eligible for parole and banned from driving for only 8 years. (Cooper, 2019)
- An unlicensed truck driver, with detectable quantities of methamphetamines in his system, drove through two red lights, drove past a crossing guard wearing high visibility clothing, hit Willow Griffiths, then a 17 year old child, leaving her with life changing injuries and requiring 24/7 hospital care. The truck driver sentenced to 33 months in prison, eligible for parole after 18 months and banned from driving for only 8 years (Mourad, 2021).
- A motorist who endangered the lives of 8 children by allowing them to sit in the tray of his ute as he sped along a beach, fined \$1300 (Tomevska, 2021), essentially a child endangerment fee of \$162.50 per child.

- A driver who failed to clear his frosted windscreen, hit a cyclist causing life changing injuries, including a brain injury and post traumatic amnesia. During the hearing, the court heard that the driver's actions were "an error any of us could make". The driver was placed 12-month good behaviour bond, with the magistrate not wanting to ruin the driver's future opportunities (Williams, 2018).
- A motorist who became angry at another motorist for what he perceived as her driving too slowly, overtook her vehicle in a slip lane, waved rude hand gestures to her, pulled back in front and slammed on his brakes. The truck driver behind the vehicle he'd just passed was unable to stop in time, resulting in a collision and the death of a 10-year-old child. The offender received a 6 year prison sentence, and a 10 year driving ban. The lack of a lifetime driving ban in this instance of culpable driving causing death was particularly offensive, given the man's history of road rage incidents and deliberately using his vehicle as a weapon (Cooper, 2016).

In Australia, penalties for motorists who have killed others are so lenient, that a person who wishes to deliberately end someone's life has every incentive to choose a motor vehicle as a weapon. As long as the scene is crafted to look like a genuine "accident", a person who uses a motor vehicle to kill has a realistic chance of proceeding through our legal systems without seeing the inside of a prison cell for more than a few hours. Even under the influence of drugs or alcohol, a motorist may only see very short periods of prison time for killing while driving. The lack of serious penalties for criminal negligence resulting in death whilst driving, and authorities who may be quick to relate to the perspective of motorists, results in the perceived risk of harsh legal retribution for dangerous motorists being low. This must be addressed if Australia is to achieve Vision Zero.

Examples of legislation changes which could be employed to increase perceived risk for motorists could include:

- Introduction of assumed and strict motorist liability for damages in collisions with vulnerable road users.
- Introduction of equal assumed liability for damages in collisions between motorists (all motorists assumed equally at fault. Onus on all parties to prove they could not have reasonably done anything more to avoid a collision), and;
- Where a motorist is involved in a collision where any other person has died, a driver's licence suspension should immediately commence until crash investigations have concluded, and;

- Where a motorist is found wholly or partially at fault for the death of any other road user, a lengthy minimum licence suspension must immediately be imposed (ie: 25 years or more), and;
- In instances where a motorist is found guilty of culpable driving causing death, their licence must be cancelled for life without conditions, and;
- Where a motorist has had their licence suspended or cancelled after causing death, and are caught driving without reasonable justification (such as a genuine medical emergency) they will be sentenced to prison.

Of course, no matter how severe penalties for causing death and injury to others may be, there will always be a minority of people who will repeatedly engage in intentional risky activity while driving. Where a person repeatedly demonstrates that they do not have the cognitive ability to interpret risk and act appropriately while driving, then in the interests of public safety, their right to drive a motor vehicle in public must be revoked.

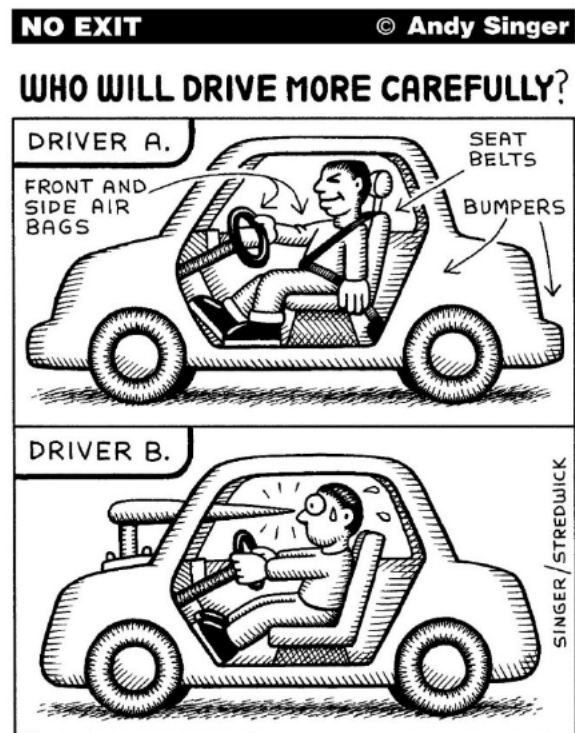


Figure 1: The pointy stick mounted on Driver B's bonnet could represent harsh punitive responses to any dangerous driving charge.

Summary

Strategic changes to road safety systems which increase immediate perceived risk to motorists must be an underlying tactic used while striving to achieve Vision Zero. This must include harsh penalties for causing death and injury while driving. This must also include the realistic possibility of a permanent loss of licence when a motorist repeatedly demonstrates a lack of concern for the welfare of others while driving.

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