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Fitness to Drive and Other Issues

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Submission to the Inquiry into the Road Safety Legislation Amendment
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Standing Committee on Justice and Community Safety

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I request and approve publication of my submission, including my full name, on the
Committee's and any other website as required.

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Abstract

This submission mainly discusses road safety in relation to the questions associated with a driver's fitness to drive a motor vehicle. Consideration is given to the possible remedy of the dangerous and problematic issues. Also briefly discussed is the issue of unauthorised entry of a motor vehicle.

Introduction

This submission mainly discusses road safety in relation to the issues associated with a driver's fitness to drive a car or other vehicle.

The matter of a person's motives in driving dangerously, from a psychological perspective, was discussed in a previous submission to the Committee (Pitcher, 2022) and will only be referred to here in passing.

In that previous submission, I pondered the point:

Perhaps there is also a need for learner drivers [and others] to pass a psychological examination as well as the practical one of being able to control a vehicle, to prove their mental and psychological suitability to be allowed control of a car. (Pitcher, 2022. p.6)

I take this as my starting point in investigating and discussing the main focus of the first part of this submission: how to understand, determine, and decide, a driver's fitness to drive of a motor vehicle.

In the second part of this submission, I consider briefly the inquiry's other topic of 'unauthorised entry into a motor vehicle'. I do this mainly by speculative thinking as to what questions and problems might arise and be caused by arguments related to the exact meaning of that phrase and its implications. Since I am not a lawyer (nor a Committee member), I leave the answering of those questions to the Committee.

Driver lack of fitness to drive

Firstly I discuss some of the more common factors which can be considered as leading to a driver's fitness to drive being less than is acceptable or safe for other road users, due to an impairment of the driver's ability to control the vehicle or respond to an emergency or unexpected situation.

I also note any response to these factors, its success and possible improvement.

Many sources discuss the effect of alcohol on driving fitness. Alcohol impairs a driver's judgement of a situation, reflexive actions in an emergency and attitude towards other road users. It is commonly recognised that driving impairment due to the effects of alcohol is the most common factor of risk for car crashes and their resulting injuries both to the driver and victims.

Other drugs, both medical and illicit can cause similar, or even stronger, impairment than alcohol. Ogden and Moskowitz (2004) discuss the effects of various prescription drugs on a driver's performance and fitness to drive. All of the drugs discussed can be considered unacceptable to some extent in their effect on a driver's ability and fitness to drive, even in small, prescribed doses.

The finding and dealing with drivers affected by alcohol or drugs is fairly well established, although its efficacy is sometimes doubtful. It may be that strengthening the Police focus in this direction could result in improvement in the apprehension rate of affected drivers and thus reduction in its effects. Whether this would discourage other drunk or drugged people from driving is a long debated question.

The above are the result of certain substances introduced artificially into the driver's body, but there are also many naturally occurring influences on a driver's fitness to drive.

Visual acuity is the most commonly, and in most jurisdictions, the only, parameter tested as a requirement for a driver's licence, but studies have shown that the link between the results of such a test and car crash rates is very weak.

A recent study in India, (Chakrabarty *et al*, 2012) attempted to identify the shortcomings in physical attributes of the drivers that may pose road safety hazards such as visual acuity, peripheral vision, depth perception, glare recovery, colour vision, contrast sensitivity, phoria, etc. It was found that these factors could be improved by proper training.

Owsley and McGwin (2004) discuss many of the effects of imperfect vision on a driver's fitness. These range from the minor effects of visual focussing which can be overcome with glasses to near-blindness and drastically reduced ability to focus and delineate objects in the visual range. Some of these can be alleviated or negated by glasses or other aids, while others are sufficient to identify the victim as badly visually-impaired or legally blind. The level of impairment will be a factor in determining a driver's fitness to drive.

These effects need to be tested for more rigorously so that persons affected are not allowed behind the controls of vehicles.

Recent research suggests that there is a connection between glaucoma and cognitive impairment, which would reduce an affected driver's judgement and fitness to drive. The source of the problem in glaucoma is said to be most often due to damage to the optic nerve. This causes a reduction in visual signal strength fed to the parts of the brain responsible for visual processing and thus a cognitively-impaired response to what is seen. This pathology of the central nervous system is of the utmost importance but is often underrated in its effects on the driver's fitness to drive.

It is reported in Rosen *et al* (2011. p.239) that driving simulation is a good way to evaluate a driver's performance and is probably a more sensitive and valid way of testing for this problem than any other test.

Another major cause of a driver not being fit to drive in public is the psychological factor. I discussed these factors at some length in my previous submission (Pitcher 2022) and will only repeat a few points here that relate to some driver's psychological non-fittingness to drive:

According to the theory of planned behaviour, drivers who see little or no reward for respecting driving laws will be more likely to speed and drive dangerously. (Pitcher 2022. p.3)

Some people will speed and drive dangerously, regardless of the consequences to themselves or others. Nothing will stop them, not higher fines, loss of licence, nor any other deterrent. (Pitcher 2022. p.5)

Reading the vast literature on fitness to drive, one soon becomes aware that there are many other factors which can affect a driver's fitness to drive in small or large ways.

We should be aware that many illnesses can have major or minor, main or lesser side effects which affect a driver's concentration and thus fitness to drive.

As well, common practices such as using a mobile phone while driving, which is a distraction banned in most places, but still goes on, is dangerous.

Listening to music is a distraction to some extent, particularly if the driver is listening closely to a favourite piece.

Smoking can be a mild distraction, but may become a major calamity if a lighted cigarette is dropped onto the driver's lap.

Then there is the distraction of other people in the car talking or just being present, hearing unusual or loud noises from outside the vehicle, odd noises made by the vehicle itself, and daydreaming.

The list goes on.

Although most drivers can cope with some of these distractions with only minor loss of concentrations, they all to a lesser or greater extent affect a driver's concentration and fitness to drive.

It must be admitted that some of these distractions, some of the time, are of positive value in that they may help a driver to stay awake and alert, for instance when driving a long distance at night. This does not cancel out their negative effects at other times.

How all these distraction should be classified, and even moreso, what can be done about them, is very widely discussed but largely unresolved. Doing anything about them appears to be virtually impossible as they have become accepted as normal, and their possible adverse effects ignored.

The above discussion now leads me to consider what can be done about modifying drivers' behaviour to make them fit to drive, or ways to get them off the roads so that they are less dangerous to other people.

Is changing a driver's fitness to drive possible or effective?

The solution to most of the situations described above is fairly simple: don't drive when drunk or under the influence of drugs; don't drive if you are ill or have bad eyesight or some other serious disability that affects your driving fitness negatively; remove all forms of distraction; and so on.

Drivers who act in this way are demonstrating their positive attitude to driver fitness to drive. Those who do not have this positive attitude to driver fitness to drive are the problem that has to be dealt with.

In the case of some of these people the problem is a simple (?) matter of understanding which can probably be solved by education. Providing them with information on the possible ramifications of their actions will bring them into line. Again, these people have a relatively positive attitude to driver fitness to drive and act accordingly.

The biggest problem is those people who still drive, possibly knowing that they are not fit to drive, because of their negative attitude to driver fitness to drive. I discussed the psychological angle of this problem in my previous submission to the Committee *The Psychology Of Dangerous Driving* (Pitcher 2022). I will not repeat all that I discussed in that submission, but will reiterate an important point made there:

The situation is that some people will speed and drive dangerously, regardless of the consequences for themselves or others. Nothing will stop them, not higher fines, loss of licence, nor any other deterrent. (Pitcher 2022. p,5)

These psychological problems are at the basis of the person's refusal to recognise their own lack of fitness to drive. These are the people who must be dealt with, to have their attitude corrected, or kept off the road. They are the subjects of the following discussion.

Important questions about driver training in changing a person's attitude to fitness to drive occur: how effective is that driver training?; does its effectiveness depend on the driver's age, attitude, or other personal factors?; is the change permanent?

Watson (2003) remarks that there is a strong perception that specialised driver training is an effective road safety countermeasure, but there is currently no clear evidence that it produces safer drivers. He suggests that this is due to the fact that most training does not teach the perceptual and cognitive skills required for safe driving, only the mechanical process of driving a car.

Chorlton and Conner (2012) found that during their attempts to modify older drivers' behaviour and attitudes towards dangerous driving using the commonly approved Intelligent Speed Adaptation system, the participants were keen to, and actually did, show changes of attitude to road safety and their own driving.

However, after the end of the training the gains in improved attitude gradually faded and the participants resumed their old bad habits and attitudes.

Thus they conclude that the gains from training to change the attitudes, and hence the fitness to drive, of the participants, that is, older drivers, were not permanent, and that the training was basically ineffective in the long term for those older drivers, possibly because they were too set in their ways. (Chorlton and Conner, 2012. p.52.).

Many sources suggest that driver training should be directed towards modifying the attitudes of young drivers, before they are given a licence and are allowed on the road. Whether that would be possible, or effective, is a question that needs an answer.

Most driver education under supervision appears to be good at teaching the rules of the road and the associated knowledge and skills. The advantages of a longer learning period would include the potential for increased amounts of supervised practice driving over a longer period of time, thus increasing exposure to novel road conditions. Therefore, more supervised training over the longest period possible is probably the best training, whereas practice driving alone may not be so effective. (Simons-Morton and Ehsani, 2016, p.9)

Even with such training, the literature suggests that there will still be people who speed and drive dangerously, either because they have not taken the training seriously or the training has not worked, or just because of their attitude to dangerous driving, speeding, and the road rules in general.

Perhaps there is a need for learner drivers to pass a psychological examination as well as the practical one of being able to control a vehicle, to prove their mental and psychological suitability to be allowed control of a car.

There is also a major problem with refusing people who can't or won't be trained to have a better attitude a driver's licence because they are unfit to drive a car. Due to their attitude to driver fitness to drive, and disregard for the legal rules, and as

noted in the above quote, they will drive without a licence. This will cause many other problems which can only be dealt with by getting them off the road.

That is a problem of policing and will not be dealt with here, since it is outside my sphere of competence. However, it does suggest that there would be an increased need for a stronger, more directed, and more expensive, Police presence and more attention directed at irresponsible activity on the roads by unlicensed drivers.

Finally, to end this section on a brighter note. There is one suggestion that does seem to work well and be worthwhile.

Staplin *et al* (2021) report that the performance and mental fitness to drive of older drivers can be improved by improving their physical fitness.

It might be a good idea, then, to persuade more (most?) older drivers to sometimes get out of their cars and take up some form of exercise.

Unauthorised entry into a motor vehicle

This subject appears to be one that is very difficult to define in just what is meant by ‘unauthorised’, ‘entry’ and ‘use’. There appear to be many situations in which authorisation to enter the vehicle might be inferred but not actual stated.

There are a number of questions that might be asked on this topic.

What is actually meant by ‘inferred authorisation’? Is there such a thing, and when can it be ‘inferred’ to apply?

Is a person’s entry to the family car automatically ‘authorised’ since they are often passengers in it, or even allowed to drive it sometimes?

Does the ‘authorisation to enter’ in that situation, apply only when the registered owner is present and actually makes the authorisation by invitation or by common practice of allowing the person into the vehicle, or does it apply at any and all times?

How does ‘inferred authorisation to enter’ apply to a person entering a friend’s car in which they often travel, whether or not the friend is actually present?

If a person finds a car open or unlocked, could they argue that there is an ‘inferred authorisation’ to enter it in some situations, for instance if there is an unconscious or injured person visible inside it?

Or would entry to such a vehicle for such a purpose, or any other purpose, be completely ‘unauthorised’, and thus illegal?

It might be that sometimes in the case of driving a vehicle a person could argue that they are not illegally ‘using’ the vehicle, since they have actual or inferred entry to it, but only that the driving of it may be illegal, since they do not have actual or inferred permission to do that, or don’t have a driver’s licence.

They might also argue that, if they had asked permission to use and drive the car, it would have been freely given, and thus that that permission could and should be assumed to have been given, for all intents and purposes.

I’m not sure how this would affect charges against the person. It might be a sticky problem that needs special consideration in the new legislation by properly, and maybe very narrowly, defining the matter of ‘authorised entry’ and in particular defining what is ‘authorised’ either in actuality or by inference. It might also be necessary to define ‘actual’ and ‘inferred’ permission, and what ‘actual’ and ‘inferred’ actually mean.

Perhaps it would also be necessary to define the limits of any such ‘permission’, actual or inferred, in the use of the vehicle. In particular, does that ‘permission’ extend to driving the vehicle? Or just to sitting in it? Or whatever else?

The questions go on and on as one thinks more about situations that might arise in relation to any vehicle at any time. Answers need to be provided to all of them, and many others that will, or might, occur in practice, to protect both the car owner and the person assuming 'authority to enter' from any ensuing legal problems.

Also the Police and prosecutors need rigid, legally described and defined, definitions that they can use in actual practice, or the Legislation will lead to more confusion, and legal arguments, than good.

Conclusions and comments

Whether any attempt to modify drivers' attitudes and behaviour to make them fit to drive will ever be successful is a much debated point.

Most people who propose such attempts have their favourite method in which they have great confidence.

Less biased commentators tend to think that all methods leave much to be desired in their results.

The even more cynical tend to the opinion that nothing, short of the complete elimination of the motor car (and maybe not even that), will ever change anyone's driving behaviour if they are satisfied with their own performance, because every driver believes themselves to be an expert driver.

It's all the other drivers on the road who are incompetent idiots.

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