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FOR THE AUSTRALIAN CAPITAL TERRITORY

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Submission Cover Sheet

Inquiry into the Road Safety and Crimes Legislation Amendment Bills 2022

Submission Number: 002

Date Authorised for Publication: 14 November 2022

Roads Safety Bill Inquiry Submission

Summary:

This submission comments on certain aspects of the bill, in particular the arbitrary threshold of 45 km/h over the speed limit beyond which vehicles can be impounded or forfeited.

This penalty is disproportionate to the offence committed and violates the principles of natural justice. It means an extremely harsh penalty may be imposed when there was little absolute danger whereas more dangerous events may attract lesser penalties.

Furthermore, the lack of a specified time in which the offences must be committed means that the possibility of vehicle forfeiture exists for a far longer time, in comparison to all other where subsequent offences must be committed within five years.

The above two facts mean that the bill fails the proportionality test as other states have evidently implemented successful laws which are not quite as strict.

There is included an expanded discussion on proportionality, the true risks and true problems for road safety, and a plea for a safe space for people to go fast.

Finally, recommendations are made as to how the bill could be made fairer and for the general consideration of policy makers.

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The proportionality of the penalty

Comparison to other states

Section 28(2)e of the *Human Rights Act 2004* implies that punishments for crimes must be proportional as any limitation to human rights must consider any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The provision for +45 km/h speeding offences demonstrably fails this test through comparison with the equivalent laws in Australia, as demonstrated in the below table:

State	Offence				Notes
	1st	2nd	3rd	4th	
Vic	30 d	30 d	forfeit		Offences within 6 years
NSW	90 d	forfeit			Offences within 5 years
Qld	None	7 d	90 d	forfeit	For +45 km/h. Street racing etc. 90 days, forfeit second offence. Offences must be committed within 5 years.
NT	N/A				<i>No impoundment for +45 km/h, 2 days, 60-90 days and forfeit for street racing etc. Offences must be committed within 2 years.</i>
WA	28 d	90 d	180 d - forfeit		To forfeit a vehicle, offences must be committed within 5 years and must satisfy criteria of being committed within a school zone; be +90 km/h over the limit or be where the speed limit is 50 km/h or less <i>and</i> resulted in or was likely to result in members of the public experiencing harassment, intimidation, fear or alarm or property damage
SA	28 d	28 d	forfeit		Offences within 5 years
Tas	28 d	90 d	forfeit		No time period
ACT					<i>No impoundment for +45 km/h as of December 2022, 90 days then forfeit. No time period.</i>
ACT	90 d	forfeit			No time period

It can be seen that the laws in all states except NSW are less strict than those proposed in the Bill. In Tasmania police may apply to court to seize a vehicle after a second offence only for causing a pursuit. In Queensland more serious penalties, in line with those from NSW, apply to street racing and similar offences, but a simple +45 km/h offence without any of these factors is treated more leniently. Most states define a certain time period in which the offences must be committed. That the ACT does not in fact makes the law *stricter* than any existing in Australia.

The explanatory note does not provide adequate evidence as to why the impounding period or especially seizure at second offence is a reasonable means of achieving the stated goal of improving road safety when other states are more lenient with respect to seizure. The studies mentioned) without any critical appraisal of their methodology and data interpretation) were

not carried in jurisdictions with laws as strict as NSW, so clearly laws not as strict as those in NSW are sufficient for the described purpose.

The lack of a stated time period in which offences must be committed

The Bill lacks any stated time period in which the repeat offences must be committed. Section 10AA of the Road Transport (Safety and Traffic Management) Act 1999 defines a repeat offender as the person has been convicted or found guilty of an impounding offence committed at *any* time before the relevant offence was committed.

This is in contrast to Victoria, where subsequent offences must be committed within 6 years, or all other states except Tasmania and NT, where the subsequent offence/s must be committed within 5 years of the previous offence. NT has a two-year period and one could not be found for Tasmania.

It is not clear if or how the provisions of the *Spent Convictions Act 2000* will apply to convictions under Section 10AA due to the use of the word *any*. Either way the Spent Convictions Act prescribes that convictions shall become spent when no offences are committed within 10 years. Since the Act defines offence in this instance as being any offence as defined in the relevant legislation, this may mean that a simple failure to dip headlamps offence after nearly ten years will mean the conviction will not be extinguished. This means that the prior conviction will be left like the sword of Damocles over the head of a person for a minimum of a decade, when it already takes one fewer conviction than in most other states to have a vehicle seized.

In comparison to other states, let alone from a standalone moral view, it is clear that this lack of a defined time period greatly increases the chances of a person having their vehicle seized. There is no proof that this is needed to achieve the desired outcomes.

Prescribing only impoundment

In several states (NT, Vic, NSW, Tas), a vehicle operated in breach of the 'hoon laws' may be impounded or immobilised. Although physical devices such as wheel clamps are sometimes used for immobilisation in NT, Victoria and Tasmania the most common method in NSW is through confiscating the vehicle's number plates for the period. The owner is allowed to drive it to their garaging address and heavy penalties apply if it is operated during the confiscation period.

This is the most commonly used punishment for a +45 km/h offence, not impoundment. It does not come with the heavy financial penalty of paying the impoundment fees and is therefore a lesser punishment. This correctly recognises the lesser nature of a +45 km/h offence. If any form of proportionality is to be adopted, this should be the preferred penalty for +45 km/h offences, not impoundment and seizure.

Furthermore, the issue of impoundment fees and payment should be mentioned. In New Zealand, the fees are prescribed at a level that actually covers the costs of impoundment, currently equal to about \$400. In other states, and especially South Australia, these fees are deliberately excessively large (about \$1400 or more). This represents an extra penalty on top of the already very high fines, and curtails a person's resources for seeking legal remedy if they believe they are not guilty. SA does not allow payment plans and does not allow payment delays in case of challenging a conviction. There have been multiple cases of people successfully challenging a conviction but finding that their vehicle was sold anyway. This demonstrates an example of zeal to punish outweighing the human rights of the accused.

Automatic suspension and disqualification

The law prescribes an automatic, instantaneous licence suspension for +45 km/h speeding. This is not reasonable as it does not allow the person served to contest a notice and have it overturned. If they do manage to do so, then they do not receive compensation for the time and inconvenience caused. This combined with the strict liability nature of the offence incentivises prevention of unsafe convictions and violates the natural principle of ‘innocent until proven guilty’.

In NSW, where number plates have been seized rather than the vehicle impounded, the suspension is usually not instant. Instead a sticker is placed on the vehicle detailing the offence and period the person is allowed to drive it directly to their residence or place of storage. Once this is completed then the suspension applies as normal. This is normal practice for 45 km/h speeding offences, as the offender does not represent the same risk as someone actively involved in racing.

Risk

The laws are not tackling the major causes of road deaths

The harshness of the penalties prescribed in the bill is justified in the explanatory note as being necessary to protect the life and safety of the public.

The note says that 21% of recent road deaths in the ACT were caused by speeding as a primary factor. Of these, only a proportion would have been caused by activities that are penalised by this bill. Hence the major causes of road deaths are not being addressed. Rather a very harsh penalty is imposed against activities that have a lower overall societal burden than others that are apparently not considered so serious.

The note mentions that 41% of road deaths in NSW are attributed to speeding. The problem is *NSW already has laws of the type in the bill*. As NSW’s overall rate of fatalities has been consistently higher than the ACT’s over the past decade, this would in fact show that the laws proposed in this bill are *not* effective at a societal level.

If the intent truly was to make society safer, much stricter laws would be brought in against causes of death other than speed-related ones. At best the focus is misplaced.

Overall societal risk

The rate of fatalities for cars in Australia over the past ten years is about 3.1 per billion vehicle kilometres [1]. The average speed of vehicles in Australia is about 60 km/h [2]. This means a rate of about one death per 5.37 million hours of driving. The ACT’s fatality rate is about 1.5 per BVKT, or one per 11 million hours of driving.

In the years 2019 to 2021 the ACT did not experience any motorcycle fatalities at all, a remarkable achievement. This was done with the popular motorcycling roads having speed limits of 100 km/h until June 2021 (in many states they have been reduced years ago), no, somewhat narrower ‘hoon laws’ and no targeted enforcement campaigns of the type regularly used by other states (and that many riders consider to be discriminatory harassment).

The average fatality rate for motorcyclists per billion kilometres travelled is about 90 over the past ten years. If it is assumed that motorcyclists travel faster than cars and average 70 km/h, this comes out to 1 fatality for every 159 thousand hours.

A comparison can be made to forms of aviation analogous to driving cars and motorcycles, light vehicles carrying a small number of people. The data are from between 2014 and 2018 [3]. General aviation, licenced by the Civil Aviation Safety Authority, saw 5,692,300 hours flying time and 153 fatalities, a rate of one every 116 thousand hours.

Sport aviation is a category of recreational aviation activities created in response to perceived regulatory issues in general aviation. Aside from general flight rules its regulations are delegated to a series of associations around Australia rather than being administered directly by CASA. This is a similar model to that used in boating and diving. There were 1.835 million logged hours from 2014-18 and 49 deaths [3], a rate of one every 37.4 thousand hours. It can be seen that these forms of aviation have a significantly higher rate of death than even motorcycling. Yet there is no moral panic about the number of deaths in aviation. While driving deaths are a significant societal burden due to the fact a very large number of people drive, actual assessments of the risk fail to reproduce the 'war on our roads' rhetoric often used by activists. In comparison to some activities such as recreational flying driving is in fact very safe.

Lastly the overall burden, though significant, is lower than other causes. During the period when the ACT has been averaging about seven or so traffic deaths per year it has been averaging about 50 suicides per year. This does not include drug overdoses, often also caused by mental health issues. Yet provision of mental health services remains inadequate. Suicide is the leading cause of death for young Australian men yet while they are expected to refrain from action that enrich their lives (such as driving cars fast), society has shirked its responsibility to provide the same people with a good start in life, for example with affordable housing (the lack of which also inflicts a massive economic cost as prime-age spenders are forced to put their income into rent or a mortgage rather than goods). Overall the moral panic over driving seems somewhat overblown compared to the deaths from other causes, which are quieter but no less impactful. This particularly applies to 'hooning', which is a relatively small proportion of overall road deaths.

The ACT's relative risk

These laws are being made partly in response to an unusually high number of road deaths in the ACT during 2022. Single events should not be taken as trends and used to produce laws. Despite not having these laws between 2010 and 2020 the ACT's rate of road fatalities by population and vehicle travel was consistently the lowest of any Australian state and one of the lowest of any jurisdiction in the world, bettering even Sweden, the originator of the 'Vision Zero' philosophy.

NSW and Victoria have had harsh enforcement of penalties including a 45 km/h threshold for impounding and seizure. Yet they achieved worse safety. The lack of such a law is being dishonestly promoted as a cause for the ACT's recent safety issues. It is dishonest because it cannot be the cause when the prior trend was the opposite. Therefore, the long-term trends do not illustrate a need for such a law.

The law does not address the main incidents of 'hooning' as it only affects registered drivers and are likely to inflict unduly harsh penalties otherwise:

Hoon laws most affect licenced drivers driving registered vehicles, as they have the assets to lose. Many people, especially licenced drivers, will deliberately seek a quiet country road if they want to drive at high speeds. This is not just because there is possibly a lower chance of being caught (although the intensive police operations on many popular motorcycling roads means the chance of being caught is often higher than in a suburban area) but because such roads have far less traffic on them. This means that there is far less a chance of harm coming to other road users. Furthermore, someone who is merely speeding (as opposed to racing) represents less of a risk because they are more likely to be concentrating on their environment, rather than another person, as they are not engaging in competitive behaviours are less likely to be pushing their limits. They would like to be able to ride or drive their

vehicle for another day, and to have it intact rather than having it written off, so are more careful and are unlikely to be intoxicated. In these cases 45+ speeding is a victimless crime

In contrast hoon laws will be much less effective against drivers who are driving unregistered, often stolen vehicles, often without a licence. If there is no sense of ownership then the seizure of a vehicle is no longer a deterrent. The effective penalties against these types of offenders will instead be fines and imprisonment. It is these types of drivers who are the most problematic. They are also much more likely to be on drugs or drunk, and they account for most of the reported incidents recently. These people have no regard for their vehicles (hence why they behave in a way that puts them at much more risk, whereas the owner of an expensive car or motorcycle wants it to be intact), and so the threat of a loss of the vehicle is not a big deterrent.

A good example of this is a very prominent recent case which has led to a public advocacy campaign, the death of Matthew McLuckie. McLuckie's father has been understandably very upset and is campaigning for stronger laws against dangerous driving, including changing the ACT's laws to match NSW's. The issue is that the driver that killed McLuckie has been alleged to be driving a stolen vehicle and to have been on drugs at the time of the accident, although charges have not yet been pressed so these allegations remain unproven at the current time. It is apparent that this was the kind of incident that would have been prevented by having a police officer to apply the ACT's current rules, or to enforce non- 'hoon' related laws, and that a large number of severe penalties could be incurred by this person when charged. The proposed 45 km/h impoundment threshold would not have prevented this death.

Put simply, the arbitrary speed threshold employed in many states means they are much more likely to affect people of the kind I know who go riding on a Sunday afternoon and would like to do 100 km/h or a little bit over on a road that used to be 100 km/h but is now limited to 60 km/h. None of these people are malicious, they are ordinary tradies, public servants, marketing assistants and so on. You will find the whole spectrum of society amongst these very ordinary people, who are united by a passion for riding a motorcycle with a decent turn of speed.

In the absence of a Nürburgring-like facility that can recreate the geometry and experience of a mountain road while being a closed course, and indeed in the absence of any appropriate motorsport facilities at all, these people have no place to go other than public roads. They are simply seeking the unique feeling that comes from controlling a small machine at a good speed. It would be totally unjust to these fundamentally good people to seize their machines for going such an unremarkable speed. They will accept the consequences of being caught in the form of fines and points. But to inflict the loss of their machines on them when they have no other place to go and are doing a speed that was barely illegal only a year and a half ago defies any definition of justice. These are good people who, even though knowingly defying the law, do not mean any harm by it, and would be happier if the rules had not suddenly and dramatically changed on them.

Offenders who are behaving with deliberate malicious intent and engaging in highly dangerous activities such as street racing can already be prosecuted to the extent that anyone wants, including taking their vehicle. The lesser danger simply from higher level speeding should remain reflected by a lesser penalty as is done in Queensland, and the laws overall can be made more just by making it three instances for offences and adding a five-year time period.

Arbitrariness of some offences

The 45 km/h threshold is completely arbitrary and mean that 1 km/h may make a massive difference to the penalty people will face. This is in contrast to the other covered offences that, although they require some subjective judgement to ascertain then, can generally be agreed to represent a dangerous activity in their totality.

Actions which are easily achievable, not necessarily apparent to other road users, or not as dangerous as other actions may fall afoul of 'hoon laws'. For example, the popular roads for recreational motorcycling in the ACT have a variety of speed limits, some more reasonable than others, that mean an unremarkable speed would lead to a 'hoon offence'. The speed limit along the entirety of the Brindabella Road used to be 100 km/h. In June 2021 a section was lowered to 60 km/h, effectively restoring a speed limit that had been implemented due to construction traffic during the new Cotter Dam build. In February 2022 the 60 km/h zone was extended and much larger portions were reduced to 80 km/h. As a measure of the credibility of the speed limits, even cyclists regularly exceed the limit on the 60 km/h section, and most traffic does substantially above the limit. It is not a reasonable limit but is set due to a rigid matrix. Although an accident prone-road the accidents were either mostly concentrated in corners which feature low vehicle speeds and an addressing of these corners could have gained the same safety benefits without lowering the speed limit, or caused by people doing well over the 100 km/h limit.

In the 60 km/h section even a small LAMS-approved motorcycle such as a Kawasaki Z300 can easily do 105 km/h and this speed would formerly have attracted a small fine and 1 demerit point prior to the change. In the 80 km/h sections again almost any motorcycle and many cars can easily attain 125 km/h.

Although it is indisputable that doing these speeds significantly raises the risk (mostly to the user doing it compared to other road users), it is disproportionate that a person might have their vehicle seized for being caught doing such a speed (especially at widely spaced times). In the case of the 60 km/h zone the change in speed limit so vast that only a person completely unmoved by the idea of fairness and common sense think that someone's vehicle should be seized or impounded for doing a speed that would formerly have got only one demerit point, if they were pulled over at all. The threshold has shifted even though the actual risk hasn't. Even if it not considered a safe speed, very few people would consider doing 105 km/ on that road to be genuinely 'hooning'.

The same also goes with someone doing 145 km/h on the section of Uriarra Road west of Uriarra Crossing. This is certainly a speed that is dramatically more dangerous, but on a road that has very low traffic, long sight lines and few roadside hazards the current penalty of six points and a very hefty fine (about \$1850 at current) seems proportionate to the offence, as the risk to other road users is simply nowhere near as elevated compared to say, racing on a suburban street.

In comparison, someone who chooses to do 1 km/h less than the threshold, no matter the situation, will be subject to much lesser penalties. Doing 124 km/h on Parkes Way east of Commonwealth Avenue poses a far greater risk to other road users than any of the above outlined scenarios on country roads, yet the driver will escape with merely a fine, demerit points and possibly a licence suspension. The arbitrary speed threshold in laws such as NSW's does not clearly accord to the actual risk posed by the situation at all and leaves a 1

km/h threshold between a merely painful punishment and a devastating one. The ACT's current laws do not have this issue currently, and excluding the arbitrary numerical criteria would be the most adjust approach.

A wider discussion on proportionality

The idea of proportionality, that 'the punishment must fit the crime', is one of the oldest societal concepts. The penalties imposed by 'hoon laws' often fail to meet a reasonable standard of proportionality, being capable inflicting devastating losses on those penalised even when there were no harms to persons from the offence. Despite legislative scrutiny committees regularly making comment that the laws significantly infringe upon human rights, they rarely ask the question of whether it is proportionate to the offence. In this particular the bill's explanatory note does not prove so.

The trite soundbite 'if you don't break the law you'll be you won't be penalised' is often trotted out in this situation. This is a deflecting argument designed to prevent discussion of the proportionality of the punishment.

A very good example of this is England in the eighteenth century. The 'Bloody Code' is a term applied to an accumulation of laws in England for which the violation incurred the death penalty. This included, amongst other offences, the theft of any property worth more than one shilling, about half a day's wages for a skilled worker at the time. A modern equivalent would be being executed for stealing \$150. Despite the clear violation of the law most people would argue that being executed (and even being imprisoned) for stealing such a sum would be a totally disproportionate penalty.

A more modern and analogous situation is the 'three strikes' laws used in some states in the USA. These are laws that prescribe mandatory sentences for crimes defined as felonies, with the third offence being a mandatory life sentence. While some examinations have claimed these laws are effective in reducing crime, they are widely opposed on moral grounds. This is because the offenses that can mandate a life sentence include 'petty felonies', such as the theft of property of a low to moderate value.

The comparison of these situations to 'hoon laws' as widely employed in Australia (and increasingly a few other countries, such as Denmark and some German states) is very apt. A penalty under these laws may mean the seizure of a vehicle of several tens of thousands of dollars (or more) value. There is not just a large financial cost involved, but a massive mental and emotional cost as that vehicle may be very important to the person. Some offences are often a victimless or nearly victimless crime (with the only inconvenience coming from noise), yet will incur a penalty far about than more harmful actions. 45+ km/h speeding is an example of this. It is unjust to inflict a penalty massively larger than most traffic penalties on a person because it happens to espouse a few disliked activities. This applies in the case of some offences covered in this bill. A person's overall lifetime risk of being killed by a driver doing 45 km/h over the speed limit on a quiet country road is far less than being killed by a driver who is merely distracted, yet distraction related penalties are much smaller.

We don't treat driving offences the same way as most offences, by the seriousness of the consequences. For example, illegal possession and use of a firearm are treated more seriously if they are associated with the commission of another crime, and even more seriously if they involve harm to other people. In comparison despite the severity of the penalty (potential loss of a vehicle), 'hoon' offences are treated the same regardless of the situation. This doesn't make sense nor is it fair, and is inconsistent with the normal consequences-based approach. The argument is usually presented that the action has the *potential* to cause a death but this is

inconsistent with the way that crimes and negligence (in a civil suit) are legally penalised. Swinging a baseball bat can cause serious injury and death, if it impacts someone. We do not heavily penalise people for swinging a bat when it contacts nothing but air.

One unifying aspect of ‘hoon laws’, the Bloody Code and ‘three strikes’ laws is that the harshness of the punishment is partially meant as a deterrent. Yet their effects were and are not marked, in fact crime in England fell a large amount after the adoption of more lenient policy. Overall societal conditions are far more important. If people are supported they will commit fewer crimes. In the case of traffic offences this means providing a venue where they can engage in their desired actions. Unfortunately, ‘sending a message’ as a deterrent often takes a backseat to getting a genuinely just outcome.

This can further be contrasted with the penalties inflicted for similarly clear violations of law that result in serious or fatal injuries, but do not fall under the category of ‘hooning’. Violations of right of way are the most common cause of serious to fatal multiple-vehicle motorcycle accidents, the classic situation being a driver making a right turn across the path of a rider. The fault in this particular scenario almost always lies with the driver. Such accidents are more pervasive risk in terms of infliction of harm to others (motorcyclists engaging in hoon behaviour pose most of their risk to themselves) yet are not treated anywhere near as seriously as ‘hoon’ offences. It is common for a driver to escape a serious injury crash with at most a licence suspension for a moderate period and a fine. One particular feature of these types of accidents is that the possible penalties are often not enforced, there are many examples of clearly at-fault drivers escaping the maximum prescribed penalty even for serious injury or fatal crashes.

Overall it is clear that ‘hoon laws’ regularly inflict disproportionate penalties and do not address what are actually the major overall causes of crashes. Offences that are vastly differing in risk are treated the same. The ACT’s current laws are better in that they clearly define behaviour that any person can agree as being dangerous, not just an arbitrary level speeding.

Motivation

The timing of this bill poses a curious question when put in context of events and actions related to it. Why has it been tabled now? There is currently a committee inquiry ongoing that is likely to recommend similar actions to this bill, but without the debate and report being completed it is impossible to see the broader framework of what should be done, nor will those who do not agree the stricter penalties be heard from.

Incorrect Claims

There are a few claims regularly made that do not stand up:

- The AFP Police association has been reported in the media as saying that they do not have the power to seize ‘hoons’ vehicles. This is not correct, the ACT’s laws when it comes to power against street racing etc. are the same as any other state’s except for the arbitrary 45 km/h threshold. See [6] for an example.
- Advocates have claimed that the ACT has no ‘hoon laws’, this is completely incorrect. Furthermore, the widely reported deaths in the ACT have predominantly

involved persons not affected by the proposed vehicle impounding and seizure provisions.

Emotional reactions disguised as policy making

Emotions are one of the most basic human traits. Unfortunately, their instinctual nature and lack of consistency between people makes a poor substitute for logic when it comes to policy making. A good example of this is the saying that ‘a car is weapon’, even though the lifetime risk of dying from one is significantly lower than the risk from an ordinary fall. It sounds snappy, but is easily disprovable. Weapons are directed with intent to injure or kill. A gun has no other purpose than to kill things and it was designed to do so. Cars were designed for transport and in the case of many vehicles (especially motorcycles), recreation. Those who use them very rarely use them with intent to kill. Cars are a weapon no more than a cricket bat or a heavy spanner are weapons. They can easily be used to kill a person but that is not the intent of their use or the normal effect of it. Indeed, it would be an incredibly ineffective weapon that took millions of hours to kill a person. The very use of the phrase ‘hoon laws’ shows excess emotion is policy making. ‘Hoon’ is a derogatory word, an insult, and not at all indicative of a morally sound way of dealing with fellow human beings.

While individual deaths are absolutely tragic, the advocacy for harsh laws due to certain causes diminishes the importance of the vast majority of deaths that are due to other causes. Perspective needs to be kept, and yes this does include the human rights, not just of the perpetrator, but of people who are performing actions that are similar but have not caused any harm. People regularly inflict greater actual harms, often through seemingly more innocuous actions, yet do not get anywhere near the amount of opprobrium. This is because advocates are only directing their guns against the obvious targets that personally displease them. A ‘hoon driver’, and these advocates often have a broad range (pretty much including any motorcyclist), is offensive not necessarily because of the danger, but the annoyance.

And indeed, it will annoy many advocates of ‘tough’ laws to admit the real motivation for wanting them. It is not safety, but vindictiveness. This can easily be discerned in mocking, condescending tone often used by these people in more informal settings such as internet comments. The desire to crush vehicles of offenders who have caused no real harm is a particular giveaway. Some actions can be annoying, and the advocates of such policies often feel helpless to remove this issue. By implementing stricter laws, they receive not satisfaction from being (a tiny bit) safer, but the most satisfaction from seeing those falling afoul being reduced to a greater level of helplessness through the destruction of a prized possession. Vindictive retribution is not a reason to create laws (especially when adequate laws already exist) in the modern progressive era, yet this has been a major motivation throughout the history of these laws in Australia and overseas. No matter cause, perspective needs to be kept and hot-headed emotions excluded from the policy-making process.

The voices not heard

There is only one voice that has not been heard in the formulation of these laws, and that is the voice of those who will be affected by them. This includes not just those of people who race on urban streets at night, but those who go out for an enjoyable Sunday ride and who have found the speed limit ‘rug’ pulled out from underneath them.

In the laws proposed in this bill, a contrast can be made with proposed reforms to drug offences that are currently being considered by the Government. Not only is the possession of an amount of marijuana to be decriminalised (despite the fact that decriminalisation leads to

increases in traffic accidents [7]), but there are further proposals to extend this to small amounts of all ‘hard’ drugs, such as cocaine and ice, as well as reducing penalties that are not for trafficking and dealing. The Author actually considers this approach has merit, in contrast to the societal wreckage that the ‘War on Drugs’ has produced in many parts of the USA. But it is nearly certain that these reforms will increase harms stemming from the actual drug use itself (such as when driving).

The most radical point is that the drug use is not only treated as victimless crime, and often not as a crime at all, reversing the predominant course. Even though drug use is significantly associated increased harm to the self and others this is disregarded when harm is not actually found.

In contrast, by adopting these broad laws a far greater potential is produced for devastating penalties for victimless crimes, particularly due to the 45 km/h threshold.

There is a failure to recognise that for many people, these activities represent a positive, constructive and important part of their lives. Many people who excessively speed are not doing so maliciously, they are simply seeking an uplifting experience that cannot be found any other way. Yet they are subject to discrimination from people who deny them a safe venue and who want to then crush (literally) their expressions of their desires in the only places they have. They get no engagement and have no say over the rules imposed on them. If the ACT Government is going to get serious about ‘hoons’, they could at least perform an Australia-first and give them an easily accessible safe space, and this would be befitting of their progressive ideals. Yet there are no racetracks near the ACT.

At the very minimum, there needs to be an accessible, cheaply priced motorsport facility that is not hamstrung by needlessly strict noise rules. Not one government in Australia has tried a genuinely accommodative policy by creating a venue that is free or cheap to access and caters to the wide variety of activities that people would like to do. The closest there is to this in the world is the Circuit Carole near Paris, which is free for motorcyclists half the weekends of the year. It is this kind of measure that is really needed for ‘hoons’.

Recommendations:

These recommendations are proposed to ensure that the penalties inflicted by the bill are more proportionate. These are predominantly in line with those of the other Australian states – the Author personally considers these too harsh but recognises the need for compromise.

Recommendation 1: A new clause is added to the bill to alter Division 2.3, 10AA of the *Road Transport (Safety and Traffic Management) Act 1999* to read as follows:

(2) A person who is convicted or found guilty of an impounding offence (the *relevant offence*) is a *repeat offender* in relation to the offence if the person has been convicted or found guilty of an impounding offence committed within the 5 years before the relevant offence was committed

This would bring the ACT law closer to that of other states and reduce the chance of the unduly harsh penalty of seizure for offences committed very far apart in time by inserting a five-year limitation on the offences.

Recommendation 2: As an **alternative** to recommendation 1, Division 2.3, 10AA of the *Road Transport (Safety and Traffic Management) Act 1999* to read as follows:

(2) A person who is convicted or found guilty of an impounding offence (the **relevant offence**) is commits a **second subsequent offence** in if the person has been convicted or found guilty of an impounding offence committed within the 5 years before the relevant offence was committed

(3) A person who is convicted or found guilty of an impounding offence (the **relevant offence**) is commits a **third subsequent offence** in if the person has been convicted or found guilty of two impounding offences committed within the 5 years before the relevant offence was committed

This would bring ACT in line to that of other states and reduce the chance of a disproportionately harsh penalty by prescribing three rather than two offences for a vehicle to be seized. This meets the proportionality test whereas the proposed bill does not.

Recommendation 3: Alter clause Division 2.3, 10B (2) of the *Road Transport (Safety and Traffic Management) Act 1999* to read as follows:

The motor vehicle used by the person in committing the offence is—

- (a) for a first offender—to be impounded for 90 days, unless the court otherwise orders under subsection (3) except in the case of (c); or
- (b) for a repeat offender—forfeited to the Territory, unless the court otherwise orders under subsection (3), except in the case of (d)
- (c) for a first offender, in the case of an offence as defined in Section 10AA (3) f—to be impounded for 30 days
- (d) for a repeat offender, in the case of an offence as defined in Section 10AA (3) f—to be impounded for 90 days
- (e) for a repeat offender, when already convicted under (e)— forfeited to the Territory, unless the court otherwise orders under subsection (3)

[where 10 AA (3) f is as reads in the bill, an offence against the *Road Transport (Road Rules) Regulation 2017*, section 20 (Obeying speed limit), if the person exceeded the speed limit applying to the person by more than 45km/h]

This recommendation complements Recommendation 1 by bringing the penalty for a 45 km/h over offence in line with other states. Note this is still more strict than in Queensland.

Recommendation 4: alternative to recommendation 3, paired with recommendation 2.

The motor vehicle used by the person in committing the offence is—

- (a) for a first offence—to be impounded for 30 days, unless the court otherwise orders under subsection (3)
- (b) for a second subsequent offence—to be impounded for 90 days, unless the court otherwise orders under subsection (3)
- (c) for a third subsequent offence—forfeited to the Territory, unless the court otherwise orders under subsection (3)

This makes ACT laws overall consistent with those of other states and reduces the chance of an excessively harsh penalty, by meshing with recommendation 2.

Recommendation 5: a clause should be inserted into the relevant passages that:

- For any offence where impoundment is prescribed, an officer or court may choose to immobilise the vehicle instead using a preferred method

This brings the ACT law into line with other states, where methods of immobilisation such as number plate seizure or clamping as used as less financially severe methods of preventing a vehicle being driven.

Where number plates have been seized for a 45 km/h offence, then the person should be allowed to drive the vehicle directly to their garaging address as in NSW.

Recommendation 7: the following should be enshrined in law to protect the rights of those whose vehicles have been impounded:

- The police shall be fully liable for any damage caused to the vehicle other than that strictly necessary to secure it
- Any third parties engaged to transport or store an impounded vehicle shall be fully liable for any damage caused to the vehicle other than that strictly necessary to secure it
- Impoundment fees shall be the minimum necessary to store the vehicle
- No late fees shall be charged
- A person who has had their vehicle impounded is entitled to reasonable accommodation to pay the late fee, accounting for their financial circumstances
- No vehicle impounded or subject to a forfeiture order shall be disposed of until:
 - o All reasonable options to secure payment have been exhausted
 - o All legal challenges to the conviction have ceased

Recommendation 8: Proposed clause 29 is omitted

The proposed increase in the time period of the police to seize vehicles from 10 days to 30 days is not necessary

Recommendation 9: for any offence where forfeiture of the vehicle is a possibility, the standard of proof used should be *beyond reasonable doubt*, not strict liability. For such a harsh penalty it is only just for a person to have the full avenues available for defending themselves.

Recommendation 10: due to the arbitrariness of the definition and lack of research over what constitutes a fair threshold to go from merely fines and points to impoundment and forfeiture, consideration should be given to eliminating the 45 km/h threshold. Impoundment should not occur for this offence as it is a disproportionate penalty unless occurring in combination with offences that are already adequately covered by the law.

Recommendation 11: Vehicles forfeited should be sold rather than crushed unless there is a compelling case they are not safe for public sale.

Recommendation 12: The government should establish as soon as possible a motorsport facility that can accommodate cars and motorcycles

Recommendation 13: The government engage with the street racing and other ‘hoon’ communities to hear their perspective and to enable accommodative policies to be formulated.

Sources

[1] https://www.bitre.gov.au/sites/default/files/documents/road_trauma_2021.pdf

[2] <https://www.aaa.asn.au/wp-content/uploads/2019/06/Road-Congestion-In-Australia-2019-v.3.pdf>

[3] <https://www.atsb.gov.au/publications/2020/ar-2020-014/>

[6] <https://citynews.com.au/2022/police-seize-p-platers-car-after-he-tailgates-the-cops/>

[7] <https://www.jsad.com/doi/epdf/10.15288/jsad.2022.83.494>

NT: Traffic Act 1987, Section 29 AA to AO

Qld: Police Powers and Responsibilities Act 2000 part 2 74 to 79O

Vic: <https://www.legalaid.vic.gov.au/hoon-driving-and-impoundment>

WA: Road Traffic Act 1974 Subdivisions 2, 3 and 4.

NSW: <https://www.nsw.gov.au/driving-boating-and-transport/demerits-penalties-and-offences/archived-fines-and-penalty-notices/vehicle-sanctions>

ACT: Road Transport (Safety and Traffic Management) Act 1999