



LEGISLATIVE ASSEMBLY

FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING, TRANSPORT AND CITY SERVICES

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

Submission No 38 - ACT Government / Mr Chris
Steel MLA

Inquiry into the Road Transport (Safety and
Traffic Management) Amendment Bill 2021 (No 2)

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Standing Committee on Planning, Transport and City Services

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Dear Chair

Thank you for the opportunity to make a submission to the Standing Committee on Planning, Transport and City Services inquiry into the Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2) (the Bill) introduced in the Legislative Assembly on 22 June 2021 by Ms Jo Clay MLA. I make this submission as the Minister responsible for road safety within the Transport Canberra and City Services portfolio.

Vulnerable Road User Casualties between 2011 – 2020 was looked at as part of the 2020 ACT Road Crash report. In 2020, two fatalities and 190 injuries involved vulnerable road users (cyclists, pedestrians, and motorcyclists). These figures represent 29% of fatalities and 31% of injuries that occurred in 2020. Out of these, 78 casualties involved cyclists, the lowest since 2016. 36 casualties involved pedestrians, the lowest since 2013. Nearly 25% of all casualties admitted to hospital in 2020 were cyclists and pedestrians. This suggests that vulnerable road users remain overrepresented in road casualty statistics.

The intent of the Bill is commendable. It seeks to improve road safety and increase penalties for behaviour that causes harm to vulnerable road users, in line with community expectations. As vulnerable road users have little or no physical protection in the event of a collision, it is important that they are protected in other ways through safety reforms and initiatives.

There are some 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.

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Scope of the offence

The new negligent driving offence in the Bill would only apply when the negligent driving results in harm to a vulnerable road user. A vulnerable road user is defined for the purposes of the new offence as meaning someone other than the driver of, or passenger in, an enclosed motor vehicle. For example, this includes pedestrians, cyclists, motorcyclists, users of personal mobility devices and riders of animals.

I acknowledge that the existing offences and associated penalties for negligent driving are not optimal in circumstances where the incident causes harm which does not meet the threshold for grievous bodily harm. However, the amendments proposed in the PMB should also give consideration to protections for non-vulnerable road users in these circumstances. It may not be in line with community expectations for legislation to provide differing levels of protection based on the type of road user, even where both the offending behaviour and the harm incurred were identical.

Negligent driving is premised on the driver falling short of the expected standard of care, and has the potential to harm both vulnerable road users and other road users – including drivers and passengers of enclosed motor vehicles. The commitment to protecting vulnerable road users outlined in the *ACT Road Safety Action Plan 2020-2023* extends not only to those included in the Bill's protections but other road users who have a specific characteristic that makes them vulnerable, such as older drivers and children.

Negligent driving endangers and risks the safety of all road users and thus any regulatory framework needs to ensure that all road users are protected from harm, in its varying degrees.

The Bill as drafted may also result in the situation where a person could be charged with the proposed new offence and existing offences at the same time, as the new offence overlaps with existing offences.

Proportionality

There is a question as to whether the proposed penalties for the new offence are appropriate, given the serious consequences of the behaviour sought to be addressed. The new offence will carry a maximum penalty of 50 penalty units or an infringement notice penalty of \$1600, and three demerit points. It is generally the case that serious offences of this nature, especially those with fault elements, are considered by the courts.

Applying an infringement notice penalty and demerit points to this offence may not be consistent with the Government's *Guide for Framing Offences*. There is an overriding principle that when setting penalties, 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.

The *Road Transport (Safety and Traffic Management) Act 1999* contains offences for dangerous driving acts, including furious, reckless and dangerous driving and negligent driving. These offences are some of the Territory's most serious offences in its road transport legislation, with the majority subject to large court penalties, potential imprisonment terms and automatic driver licence disqualification periods. The *Crimes Act 1900* includes the most serious culpable driving offences with indictable imprisonment terms.

Elements of the offence

The PMB applies strict liability to two elements of the new offence: that harm was caused to a person and the person harmed was a vulnerable road user. As such it engages and limits the right to be presumed innocent under the *Human Rights Act 2004* (HRA).

The PMB also applies Chapter 2 of the Criminal Code 2002 to the new offence, and as a result introduces a higher standard for the fault element of negligence than currently applies to the existing negligent driving offences. This may have the unintended consequence of making it harder to successfully prosecute someone for the negligent driving offence proposed by the PMB.

Generally, infringement notice offences should be offences of strict liability 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, the elements of the offence should have a clear yes/no answer. Generally, the types of offences which are not suitable as infringement notice offences are offences that:

- require proof of intention or some other mental element;
- where there is 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 is not readily apparent without further inquiry; and
- which are serious in nature and to which a substantial penalty is attached (particularly where the penalty may include a period of imprisonment).

The offence proposed in the PMB contains the fault element (mental element) of negligence and may not be consistent with the conditions above. A determination of whether a person is driving negligently may require consideration of a range of factors that mean that it may not be appropriate to be dealt with as a strict liability offence or an infringement notice and may be better dealt with by the courts.

Commencement

Further, the PMB is proposed to commence on the day after notification, which will make it challenging to implement required system changes and informing police officers of the new offence and its policy intent. This could have a detrimental effect on the overall enforcement of the provision.

Further reforms

A significant body of work has been undertaken over the past few months with stakeholders to enhance the existing negligent driving framework. I intend to shortly introduce a Road Transport Legislation Amendment Bill into the Legislative Assembly to strengthen the Territory's existing road transport framework and better protect all road users – including those covered by the scope of this bill.

The ACT Government is committed to developing a road transport framework that ensures the safety of vulnerable road users travelling on the ACT's road network. On our journey towards the realisation of vision zero, we will continue to work with key stakeholders to implement the commitments outlined in the Road Safety Action Plan and improve the culture of 'sharing the road'.

I hope the above information is of assistance for your inquiry into the Bill. Please contact John Bowdery, Executive Branch Manager, Strategic Policy and Customer on (02) 6207 8467 if you have any questions.

Yours sincerely



Chris Steel MLA
Minister for Transport and City Services
30 July 2021