



LEGISLATIVE ASSEMBLY

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STANDING COMMITTEE ON PLANNING, TRANSPORT AND CITY SERVICES

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Submission No 25 - Pedal Power ACT

Inquiry into the Road Transport (Safety and Traffic

Management) Amendment Bill 2021 (No 2)

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PEDAL POWER ACT SUBMISSION TO

STANDING COMMITTEE ON PLANNING, TRANSPORT, AND

CITY SERVICES

ON

INQUIRY INTO ROAD TRANSPORT

(SAFETY AND TRAFFIC MANAGEMENT)

AMENDMENT BILL 2021 (NO 2)

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**Pedal Power ACT submission:
Inquiry into Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2)**

INTRODUCTION

Everyone has a right to safe travel.

Pedal Power ACT supports the Road Transport (Safety and Traffic Management) Amendment Bill 2021.

The proposed amendments will offer greater protection to all Canberrans who walk, cycle, scoot or ride motorbikes on our roads.

We are all vulnerable road users at some point.

Vulnerable road users are distinctly at-risk, and our road safety systems are not adequately protecting us. While vehicle safety enhancements and road safety strategies around Australia have been successful in reducing deaths and injuries for motor vehicle drivers, there has been little success in reducing road fatalities to pedestrians, and road crash data shows that serious injuries and fatalities are increasing for people who ride bicycles and motorcycles on Australian roads.

When a vulnerable road user is involved in a collision with a motor vehicle, the outcomes are significantly worse than outcomes for occupants of vehicles involved in similar collisions.

While many of the factors that cause road crashes may be addressed by improved infrastructure and vehicle safety technology, driver behaviour is ultimately only addressed through effective education, adequate laws, and swift enforcement.

Research shows 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 are critical factors in modifying driver behaviour (Cedersund & Forward 2007; Stafford and Warr 1993ⁱ).

Pedal Power believes that the gap in our existing legislation does not recognise the unique status of vulnerable road users, nor the serious consequences that can occur for this group. Further, existing offences and penalties do not adequately reinforce the need for people to drive cautiously around vulnerable road users. This does not meet community expectations.

The concept of protecting the vulnerable road users is not new; we have seen it successfully applied around schools, where speed limits are reduced to protect children, and police are equipped with the tools to issue strong on-the-spot penalties to deter poor driving.

The proposed amendment will similarly equip police in the ACT with the capacity to expeditiously issue an infringement notice with a significant monetary penalty where negligent driving causes harm to vulnerable road users.

CURRENT SITUATION

Safety concerns

A safety gap is growing on our roads. Car occupants are becoming less vulnerable; pedestrians, bike riders and motorbike riders are becoming more vulnerable. Nationally over the past 10 years:

- Serious injuries have increased for motorbike riders and bicycle riders.
- Motorbike riders are over-represented in fatal and serious injury figures. Annual fatality rates per billion vehicle kilometres travelled are, on average, nearly 30 times higher for motorbike riders than for other vehicle occupants.
- Serious injury to bike riders on our roads has increased by 36 per cent. Bike rider fatalities in the same period have increased by 45 per cent. This compares to a reduction in fatalities for all road users of 22 per cent, and reduction in serious injury of 18 per centⁱⁱ.
- Pedestrian fatalities over the last 10 years have shown little progress in downward trends. Children and the elderly are particularly vulnerable to injury or death in a crash.
- The World Health Organisation observes that being a vulnerable road user in urban and residential areas is a specific risk factor for road traffic injuriesⁱⁱⁱ. The human body is highly vulnerable to injury, and any road collision involving a vulnerable road user is likely to lead to injury.

Road crash data has a direct impact on our travel choices. Pedal Power notes that only 46 per cent of Canberrans report feeling safe riding their bike in our city^{iv}.

When we ride or walk along our roads, we do not have the same physical protection that those passing us in cars, trucks, and buses have. We rely on the good behaviour of other road users to keep us safe, and we rely on our laws, and their enforcement, to establish what constitutes 'good behaviour'.

There is a growing body of evidence demonstrating that sanctions have the capacity to reduce the likelihood of re-offending among a range of motoring groups and for a range of driving-related offences^v.

Research supports deterrence-based approaches – the idea that anyone can be caught 'anywhere, anytime' – to create behavioural change on our roads. Davey and Freeman^{vi} state:

'[Behavioural change] is generally achieved as a result of understanding or observing others being punished for the offending behaviour. Enforcement methods can include a highly visible police presence, and the use of a mixture of overt and covert operations. Individual knowledge or understanding of potential apprehension and penalties can also be reinforced through media campaigns or community engagement'.

Deterrence theory is the driving force for enforcement programs including drink and drug driving, speeding, mobile phone use and seatbelt non-use. It holds 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^{vii}.

This bill will provide better protection to all Canberrans. It applies equally to every single person who steps onto a road. We are all vulnerable road users at some point, whether we're walking across a pedestrian crossing, riding our bikes to work, or going out for a weekend motorbike ride.

Community expectations are not being met

Our laws must reflect community expectations that our most vulnerable will be afforded an additional layer of protection. Pedal Power is contacted regularly – at least weekly – by people who have experienced a ‘near miss’ or actual collision on our roads. Many do not feel that the penalties for crashing into a vulnerable road user are adequate.

Some recent comments made by Pedal Power members include:

- ‘I was knocked from my bike on Uriarra Road last October and am still in discomfort from my injuries (badly broken collarbone and bruised arm, hand and leg)...I was informed that she would only be charged with negligent driving. I was knocked from my bike on Uriarra Road last October and am still in discomfort from my injuries (badly broken collarbone and bruised arm, hand and leg)’
- ‘Stronger legislation is needed when a cyclist is injured as a result of a car driver’s serious negligence’.
- ‘Currently it seems to be ‘tap and go’ is acceptable’.
- ‘For me, the greatest danger on the road is the drivers who ‘buzz’ or swerve close to a rider to give them a scare. A single mistake could result in a loss of life’.
- The legislation does need to be changed to better protect cyclists’.
- ‘There should be a duty of care applied to car drivers to actively avoid accidents with bikes. Having been a motorbike rider and a bike rider, I have encountered plenty of instances where car drivers believe they are in the right and that’s all about it’.
- ‘The incredible power imbalance between cars and bikes and the incredibly low penalties against drivers who endanger cyclists have always perplexed me’.
- ‘Cyclists are vulnerable in these situations and drivers have control of a dangerous weapon. We should not have to go to hospital for car drivers to be accountable. As a cyclist and a driver, it is the responsibility of drivers to take care around cyclists so as not to endanger their lives’.

A gap in the law

The existing section 6(1)(c) of the *Road Transport (Safety and Traffic Management) Act 1999* prohibits negligent driving that falls short of causing death or grievous bodily harm (maximum penalty of 20 penalty units).

The existing sections 6(1)(a) and (b) prohibit negligent driving that causes death or grievous bodily harm (maximum penalty of 100 to 200 penalty units or imprisonment or both). These offences do not apply in most non-fatal collisions.

Most collisions in which a pedestrian or bike rider is injured do not involve grievous bodily harm or death, but do often lead to injuries such as broken bones:

- Between 1999-00 and 2015-15, the overall rate (nationally) of bike rider hospitalisation rose by 1.5 per cent per year.
- Approximately 60 per cent of cyclist hospitalisations followed on-road crashes.
- Approximately 60 per cent of hospitalised cyclists sustained a fracture^{viii}.

The existing offences cover either end of the scale – where death or grievous harm has been caused, or where harm is not a factor. A gap exists for mid-tier offences where harm is caused to a victim but where that harm is not grievous.

Further, the existing offences are not specific to vulnerable road users. They fail to recognise the vulnerability of walkers and riders and they do not reflect community expectations of specific protections for people who are vulnerable.

Our laws must articulate the duty of care drivers must take around vulnerable road users. It is through our laws that community standards are set.

THE SOLUTION: IMPROVE SAFETY THROUGH TARGETED LEGISLATION

Our streets must be safe for everyone. Our streets are used by kids who walk, scoot or bike ride with their friends to school, by families who exercise together, by people actively traveling to workplaces or community facilities.

Our laws must recognise the vulnerability of unprotected road users, by including an offence for driving negligently and harming a person who is walking or riding on or across our roads. Our police must be equipped to issue infringement notices efficiently and effectively to people who break this law.

The infringement notice approach enables matters to be dealt with expeditiously. The victim can be reassured that the legal system has dealt with the offender. The offender need not incur the time and expense of court appearances, but retains the safeguard of contesting the offence before a court if desired.

To that end, Pedal Power support this bill's goal to:

- a) Make it an offence under the Road Transport (Safety and Traffic Management) Act to drive negligently and harm a vulnerable road user.
- b) Introduce a traffic infringement notice penalty for this offence which is significantly higher than the current \$393 penalty for negligent driving. The proposed \$1600 penalty is quite appropriate. It sends the right message to the community that this is more serious than negligently damaging an object.

Section 22 of the *Human Rights Act 2004* describes rights relating to accused people in criminal proceedings. Subsection (1) provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. We note that the Bill limits this right in relation to the availability of a traffic infringement notice for the offence; the availability of infringement notices allows a person to be penalised without being tried. However, this is mitigated because:

- a) the person is not deemed guilty of an offence
- b) issuing an infringement notice supports the principle behind the right described in S22(2)(c), wherein an accused person must be tried without unreasonable delay. A person issued an infringement notice is not required to engage in any extended or arduous criminal proceedings
- c) the recipient of an infringement notice has the right to dispute the notice in court
- d) if a person has genuine difficulty in paying the fine, they can apply online for an Infringement Notice Management Plan.

The proposed new offence is proportional and legitimate, and addresses a known gap in our legislation.

It is appropriate to ensure that those taking on the significant responsibility of driving a vehicle undertake this with sufficient care. Where they fail to do so, our existing laws do not sufficiently prevent harm to vulnerable road users. They do not contribute to a culture of safety.

A new offence is needed to perform these roles, and our community expects police to be equipped to respond to breaches of such laws swiftly via infringement notice.



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28 July 2021

ⁱ Cedersund, H. A. & Forward, S. 2007, How do drivers evaluate fines for different traffic offences? A literature study, Swedish National Road and Transport Research Institute (VTI), Sweden.

ⁱⁱ BITRE: Australian Road Deaths Database; Hospitalised Injury, Statistical Report, September 2020 (data sourced from Flinders University).

ⁱⁱⁱ https://www.who.int/violence_injury_prevention/road_traffic/activities/roadsafety_training_manual_unit_2.pdf

^{iv} <https://cityratings.peopleforbikes.org/cities/canberra-act>

^v Davey & Freeman (2010) Improving Road Safety through Deterrence-Based Initiatives: A review of research

^{vi} Davey & Freeman (2010) Improving Road Safety through Deterrence-Based Initiatives: A review of research.

^{vii} <https://www.officeofroadsafety.gov.au/nrss/resources-fact-sheets/enforcement>

^{viii} <https://www.aihw.gov.au/getmedia/fbff1344-6b3f-4b2a-8649-fb879dcd69ab/aihw-injcat-203.pdf.aspx?inline=true>