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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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Good evening,

I would like to make a submission to the Inquiry into Dangerous Driving.

Christopher Budd, [REDACTED]

[REDACTED] Happy for my submission to be published in full excluding my personal information.

My submission concerns vulnerable road users and the lack of enforcement of dangerous driving at the low end of the scale.

Negligent driving (neg driving) occasioning no harm is a strict liability offence that can be dealt with by TIN. It is frequently handed out by police in motor vehicle incidents when it is clear someone has done something wrong, but it's not legally clear exactly what they did wrong, or the wrong thing was quite minor, or a lack of criminal sanction would have been otherwise inappropriate in the circumstances.

The reason neg driving TINs are 'frequently' handed out is twofold. First, they are strict liability. This makes them difficult to defend. Police are confident they could successfully prosecute if neg driving was defended in court, and are not concerned about the amount of follow-through work required if neg driving is defended. Making neg driving an easy option. Second, neg driving is low value. From memory, ~\$400 and 3 demerit points. Noticeable for most people, but not so much they would get a lawyer, or take the time and effort to defend neg driving in court themselves. Making neg driving an easy option *plus* a low likelihood of needing any work at all after being issued. The police are on the record about this: at the Inquiry into Road Transport Bills 2021, the police person in support of Minister Steel expressly stated that the reason neg driving TINs are so frequently issued is that strict liability makes them easy for police to use (4 November 2021, after midday).

The issue is despite neg driving TINs being an easy option, they are only handed out by police to 'motor vehicles'. There is an odd reluctance to issue them when the victim of dangerous driving is a vulnerable road user. For example, police often decline to prosecute a close pass of a bicycle, even with CCTV that makes it clear such a close pass occurred. The stated reason is that proving a close pass in court is technically difficult and/or requires a lot of work - various analyses to *prove* the distance in the footage was less than one metre. Accepting this at face value, nothing prevents police from issuing a neg driving TIN instead. But they simply don't. It does not seem to occur to police as a valid option unless motor vehicles are involved. There are many other examples - failing to stop at a wombat crossing, failing to give way in general (e.g., driveways), cutting off (motor vehicles turning left in particular), and so on. All neg driving, all not given neg driving TINs.

Consequently, I think it would be appropriate to add a new offence available by TIN along the lines of 'endangering a vulnerable road user'. This would be strict liability, a small fine, few demerit points. Something that police will consider obviously appropriate whenever a

motor vehicle has done something wrong to/near a vulnerable road user, but the specific offence is unclear or hard to prove, or relatively minor, etc. It would be the default TIN to post to the motor vehicle's registered operator when police receive CCTV footage from a bicycle camera. For example:

(1) A person commits an offence if—

(a) the person drives a motor vehicle on a road or road related area; and

(b) the driving of the motor vehicle endangers [← dictionary definition] another person; and

(c) the other person is a vulnerable road user.

Maximum penalty: 20 penalty units [consequential amendements: ~\$200 TIN and 2 demerit points].

(2) Strict liability applies to subsection (1).

So far I've used 'dangerous driving' in a general sense, rather than the strict sense I think this inquiry is aimed at - serious offences that often kill people, and get you huge fines or gaol time or both regardless of whether you actually harm anyone. There are 2 reasons I think my above offence suggestion is relevant.

First, frequent enforcement narrows the overton window of acceptable driving behaviour. It is the fence across the top of the slippery slope. If one gets away with a bit of speeding, then they're likely to get away with a bit more speeding, and the lack of consequences eventually allows the driving to become so dangerous that the first consequence is a fatal crash. I don't know the journey (no pun intended) someone has taken to drive well in excess of the speed limit on the wrong side of the road, but I doubt that was the first time they committed a traffic offence. If they'd received consequences earlier, their journey may have been different.

The counter-argument would be that they are already suspended drivers, defiant, driving disqualified... What is a \$200 fine going to do? It is a fair question. It is prevention not cure - it's not going to stop a person already intent on driving dangerously, but years in advance it can prevent someone from becoming a person intent on driving dangerously. Also, the 'vulnerable road user' part is important. In this particular category of offence, the human-ness of the victim is unavoidable. They are not another car to compete with, or a car where a minor crash is unlikely to cause any injuries (airbags etc.). They are a person. If it is made clear to you in any context that the potential victims of poor driving are *people*, and that your duty to those *people* is so significant that it's a crime just to have a 'near miss', you can't unlearn that. Offences against vulnerable road users are the best context in which to teach this lesson. High frequency of enforcement in this context is the best way to propagate the lesson.

Second, dangerous driving is infrequent with a high likelihood of harm. Endangering a vulnerable road user is so frequent as to be ubiquitous, with a low likelihood of harm in any specific instance. I am not a maths person, however, it seems at least arguable that in consequentialist terms more frequent enforcement of low-end driving offences will prevent as much if not more harm than different or more severe punishments for high-end driving offences.

Thus I submit that a necessary part of reducing dangerous driving is the availability and frequent use of a strict liability 'endangering a vulnerable road user' type offence.

Regards,

Christopher