

Law Reform Commission - Serious road crime

Submission - Stephen Garz 4 April 2024

This submission addresses the problem of dangerous, wanton and furious driving as part of the Commission's terms of reference.

Q2.2: Dangerous driving occasioning death or grievous bodily harm

Q2.3: Circumstances of aggravation for dangerous driving

Q2.5: Wanton or furious driving

OVERVIEW

Both the Crimes Act 1900 No. 40 and the Road Transport Act 2013 No.18 include provisions relating to dangerous, wanton, furious and reckless driving but there seem to be some inconsistencies in approach and misalignment in addressing the problem.

The Crimes Act for example does not appear to treat the act of dangerous, wanton and furious driving as a serious crime in itself, rather that it contributes to and is only in and of itself a serious crime should there be serious consequences.

I submit that the act is the crime and should be treated as a distinct serious offence with the serious consequences of death and injury to be treated as significant additional offences.

Drivers need to understand that the behaviour of dangerous, wanton, furious and reckless driving is a danger to the public, is unacceptable and that the act of driving in this manner will be punished as a distinct offence.

ARGUMENT

By way of argument imagine I am an underground coal miner in a gassy mine. A limit to my conduct is not to make any naked flame as a safety measure to avert the possibility of a catastrophic explosion or fire and the risk of death or injury to workers and/or damage to the workings. One day I deliberately strike a match to light a cigarette in flagrant disregard of the rules. Fortunately, nothing happens, there is no explosion and no fire, no one is killed or injured and the workings are undamaged. By my action though I have nevertheless committed a serious offence. If, however, we were to apply the current principles of the Crimes Act and the Road Transport Act that apply to dangerous driving the defence would be that no death or injury was occasioned by my act and the seriousness of my act is therefore diminished. But clearly a great deal was risked by my action and disaster was avoided by mere luck. If I were to continue my behaviour unchecked then it's quite possible that eventually the luck might run out.

We see this on our roads every day and the regular mayhem, death and injury we witness is partly a direct result of inadequate checks on driver behaviour. The limits we impose on driver action are there for a purpose. A speed limit for example is a safety measure that says “not above this speed in this area”. Transport for NSW and others in campaigns aimed at reducing road trauma point to speed as a significant factor in nearly half of road deaths and have observed that most accidents involving speed occur at just 10 kmh above the posted limit. (The idea then of 45kmh above a posted limit being significant where dangerous driving occasions death or injury is perverse). Safety measures matter and we diminish public safety if we do not uphold the seriousness of its violation.

Similarly, the manner in which we operate a vehicle on public roads also has limits imposed which are designed to ensure that people are not killed, injured or otherwise harmed. Yet the message of the law appears to be that, provided no one is harmed, speeding and other reckless driving behaviour is not so serious.

For example, in the Road Transport Act 2013 No.18 under Part 5.2 Speeding and other dangerous driving, Division 1 117 (1) Negligent, furious or reckless driving includes penalties for such driving occasioning death or injury but then we have 117 (1)(c) *if the driving does not occasion death or grievous bodily harm – 10 penalty points*. In 117 (2) we have a stronger provision; *A person must not drive a motor vehicle on a road furiously, recklessly or at a speed or in a manner dangerous to the public*; which is then diluted in (3) regarding circumstances. In the same vein in the Crimes Act 1900 No. 40, Part 3 Division 6, Acts causing danger to life or bodily harm, under 52A Dangerous driving substantive matters, there appears to be no provision for the act itself of dangerous driving, only its consequences. Clauses 53 and 54 appear to address this somewhat, *Injuries by furious driving etc, Causing grievous bodily harm*, but again punishment is only applied if it causes bodily harm.

The one underlying factor in all circumstances is the act of dangerous driving itself but in law provisions seem either weak, confused, contradictory or indeed absent.

I don't believe it's necessary to introduce further layers of complex law, eg Vehicular Manslaughter. Rather let's get the existing laws working right, make them clearer, better directed, better coordinated and then enforce them. Presently in Newcastle and the Lower Hunter we are experiencing a scourge of dangerous driving evidenced by hoon drivers performing burnouts and skids on public roads. I've attached a sample image to illustrate this (and have many more if the LRC is interested). There have been injuries and deaths resulting from this behaviour. It appears to be largely unchecked. This is in spite of many existing laws being sufficient, for example the Road Transport Act Part 5.2 Division 1, 116.

CONCLUSION

I believe we should consolidate and better align all those Acts and other laws presently dealing with dangerous driver behaviour, make the act of dangerous driving a more serious offence in its own right, alongside the other provisions, and then robustly enforce them. Otherwise, it seems to me, we are just continuing to wait for that coal miner in the gassy mine to run out of luck. The law needs to do more to prevent death or injury. Rather than waiting for it to occur before punishing the consequences of unsafe acts let's curb the act of dangerous driving itself.

S. Garz

