

INQUIRY INTO ROAD TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT) AMENDMENT BILL 2021

On 22 June 2021, Jo Clay MLA tabled a bill in the Legislative Assembly to better protect pedestrians, motorcycle riders and bike riders, otherwise known as vulnerable road users (VRU).

The bill aims to improve road safety and provide more equity on our roads.

Pedal Power is contacted regularly – at least weekly – by bike riders who have experienced a ‘near miss’ or actual collision on our roads. It is clear that we must do all we can to protect people who are vulnerable on our roads. Any road collision involving a VRU is likely to lead to injury.

Our current laws simply do not meet community expectations. Some of the feedback Canberra bike riders have provided about their perceptions of current laws include:

- ‘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’.
- ‘Stronger legislation is needed when a cyclist is injured as a result of a car driver’s serious negligence’.
- ‘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)’
- 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 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’.

Vulnerable road users are a distinctly at-risk group, requiring a higher level of protection than other road users; laws are our only protection. Risks to vulnerable road users are amplified, facing the likelihood of serious injury in any collision involving a car. Outcomes for vulnerable

road users involved in a collision with a car are significantly worse than outcomes for occupants of vehicles involved in similar collisions.

Existing offences and penalties do not recognise the unique status of vulnerable road users, nor the serious consequences that can occur. They do not meet community expectations.

Pedal Power ACT has joined together with community partners to support this bill – the Australian Federal Police Association, Conservation Council ACT Region, Aus Cycling, See Change, Motorcycle Riders Association, and other community members.

FREQUENTLY ASKED QUESTIONS: VULNERABLE ROAD USER LEGISLATION

What is this bill about?

Our community expects vulnerable road users to be protected by law; they expect penalties to be a deterrent; and they expect police to be equipped to issue penalties swiftly and without unnecessary delay, in the form of infringement notices. To that end, the bill seeks 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.

This bill will fill a critical gap in our legislation. Currently, a traffic infringement notice (fine) for negligent driving carries a penalty of \$393. This fine applies for all negligent driving, whether the at-fault driver hits an inanimate object such as a pole, or they hit a pedestrian. The only distinction is if the negligent driving causes death or grievous bodily harm (permanent or serious disfigurement). In this case, the matter can be referred to the courts and a higher penalty can apply.

There is no mid-level offence for negligent driving that harms a vulnerable road user. The bill is a common-sense solution to filling this gap while providing specific protection for our most vulnerable road users.

How will it help?

Pedestrians, bike riders, and motorcycle riders are vulnerable on our roads. If they are victims of a collision, it is likely they will be injured.

This Bill aims to improve community safety, by deterring careless driving and raising awareness of the need to take care around vulnerable road users (VRU).

What is the status of the bill?

The Bill was tabled before the Legislative Assembly on 22 June 2021, and is set to be debated in late August. If a bill is passed by the Assembly, it becomes law.

Does the bill seek different penalties for negligent driving that injures different types of road users?

This bill proposes a new law that would only apply if a VRU is injured as a result of negligent driving.

The bill creates a distinction between negligent driving that harms a VRU, and negligent driving that does not.

It does not seek to create a hierarchy of penalties for different victims. It recognises that actions which harm a victim are more serious than actions that do not.

The law contains a precedent for this approach, distinguishing between negligent driving occasioning death, negligent driving occasioning grievous bodily harm, and 'any other case', with different penalties applying.

Even a minor collision with a vulnerable road user can cause serious injury. If the collision is the result of negligence by the car driver, they would be liable under this proposed new offence.

This bill does not otherwise discriminate between different types of people. 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. We ALL step onto that road at some point, and when we do, we are unprotected and vulnerable. The proposed new law is designed to protect all Canberrans.

What if the vulnerable road user is at fault?

This amendment will apply only in cases where a person drives negligently AND causes harm to a vulnerable road user. It will not apply if the driver is not at fault. Conversely, if a bike rider or motorcyclist rides negligently on a road, and causes harm to another vulnerable road user, this legislation would apply to the at-fault rider.

How will this make a difference; don't people break road rules all the time?

This legislation sends a vital message that we must all take extra care around vulnerable road users. It reminds drivers of their obligations, and it tells pedestrians, motorcyclists and bike riders that our community values their safety.

How will these laws be enforced?

This proposed amendment will give police a simple traffic infringement notice to apply in these situations where harm has occurred, the conduct is clear and a higher penalty is warranted, but imprisonment and a requirement for full criminal prosecution is not warranted.

What about people's right under the Human Rights Act 2004 to be presumed innocent until proven guilty? Is it right for police to have the discretion to issue a fine, without a hearing?

The availability of infringement notices allows a person to be penalised without being tried. However, this is mitigated because:

- a) the recipient of an infringement notice has the right to dispute the notice in court; and
- b) the person is not deemed guilty of an offence; and
- c) 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.

The bill is proportional. Police must be equipped to efficiently and effectively issue infringement notices to people who break this law.