From: Neil McCrossin
To: TPWC
Cc: Noela McCrossin
Subject: Submission re "Heavy Vehicle National Law and Other Legislation Amendment Bill 2018"
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Submission re "Heavy Vehicle National Law and Other Legislation Amendment Bill 2018"

We would like to make a submission to the committee as family members of the victim of a fatal traffic incident. Our submission is relevant to Part 6 Clause 49 of the bill, relating to increased penalties for incidents resulting in death and grievous bodily harm. We would like to tell our story as a way of illustrating the inadequacy of the current law in Queensland.

In May 2015, Gerald Vincent McCrossin (our son/brother), who was 48 years of age at the time, was crossing Samuel St Camp Hill (at the corner with Boundary St) as a pedestrian on his way to the gym. Conditions and visibility were very good, and he crossed correctly on the green walk signal as verified by eyewitnesses. As he crossed he was struck by a car driven by a 19-year-old female P-Plate driver, resulting in him being catapulted through the air and landing head-first on the road. Tragically he suffered severe head injuries (Diffuse Axonal Injury), from which he never regained consciousness, and died in hospital five and a half weeks later.

This has had a devastating effect on us, his family, and his many relatives and friends.

We didn't know much about the relevant laws before this tragic event, but quite soon we learnt from the police that Queensland law has a large gap between the TORUM offence of Careless Driving and the more serious criminal charge of Dangerous Driving. We were shocked to discover from police that:

1. Because there were no specific findings of alcohol, drugs or speeding, the driver (despite killing someone who was correctly crossing on a green pedestrian signal) could only be charged with the relatively minor charge of Careless Driving.

2. Under current legislation, the fact that a death had resulted from the incident could not be taken into account in sentencing. In other words, the penalty imposed on the driver by the court would be no different to a case where no death or injury had resulted.

3. Under current legislation, the driver's previous record could not be taken into account in charging and sentencing. In our case, the driver had four driving infringements (five demerit points) in the previous 14 months. In the tragic case of Mrs Audrey Anne Dow in Mackay, the driver had had his licence suspended and was driving unlicensed – he too could only be charged with Careless Driving. In both cases the driver's previous record could not be taken into account in charging or sentencing.

In our case, when the case went to court, the driver pleaded guilty and was disqualified from driving for four months and given 100 hours of community service.

Since this time we have also become aware of other families who have been through a similar experience: a tragic loss of a family member followed by the shocking discovery of the inadequacy of the current laws. Some of these have appeared in the media and are actively working towards correcting this injustice.

For the reasons given above, we believe that the Queensland Law Society is wrong in its belief that "the current legislation can adequately deal with driving offences involving death or grievous bodily harm" (see Explanatory Notes for the Bill). The Society believes that "the judicial system is best placed to administer justice", but as we have explained above, magistrates are limited in what sentence they can impose under the current legislation.

We emphatically disagree with the Queensland Council for Civil Liberties when it tries to divide cases into those with "intent" (requiring "deterrence and rehabilitation") and those due to "inattention" (about which, apparently, nothing can ever be done). This dichotomy is quite bizarre and ignores the obvious fact that inattention can be due to factors under the control of the driver, and in fact it is their responsibility to remain attentive while in control of a vehicle. There is every reason to expect that a suitable level of "deterrence" will result in less "inattention" on the roads.

We agree with the RACQ that the proposed changes are strongly in line with community expectations.

Regarding the specific details of the legislation, we support the proposed changes but we believe that the mandatory minimum disqualification period in Section 83 (2) should be 12 months, and we believe that the driver should additionally be required to complete road safety training before regaining a licence.

Noela McCrossin
Neil McCrossin
Ian McCrossin