

Inquest into the death of Audrey Anne Dow

Audrey Anne Dow at Mackay Base Hospital on 31 July 2013 from injuries sustained in a motor vehicle accident. The collision occurred when Aaron John Kite crossed over the continuous double centre line and collided head-on with Ms Dow's vehicle. Mr Kite was disqualified from driving at the time of the collision.

The coroner examined whether the available offences applicable to the circumstances of the incident should be reviewed.

Coroner David O'Connell delivered his findings of inquest on 6 March 2015.

The Queensland Government responds to recommendations directed to government agencies at inquests by informing the community if a recommendation will be implemented or the reason why a recommendation is not supported.

The departments named in this response will provide implementation updates until the recommendation is delivered. Further information relating the implementation of recommendations can be obtained from the responsible minister named in the response.

Recommendation 1

The issue of a new mid-range driving offence be referred to the Attorney General to consider changing the law to introduce a new mid-range driving offence between the existing Criminal Code s.328A Dangerous Driving offence, and the Transport Operations (Road Use Management) Act (TORUM) s.83 driving without due care and attention offence, and in that review to consider whether it is appropriate:

1. to include a circumstance of aggravation for offending drivers:
 - a. who cause death or grievous bodily harm in the commission of the offence under s.83 TORUM, and
 - b. where they were driving whilst unlicensed or their license was suspended, or
 - c. where they were driving whilst their license was disqualified.
2. Whether any recommended new mid-range offence, if any, should be legislated in the Criminal Code or the TORUM legislation.

Response and action: the recommendation is agreed to in part and implementation is complete.

Responsible agency: Department of Transport and Main Roads.

On 11 February 2016 the Attorney-General and Minister for Justice and Minister for Training and Skills; the Minister for Main Roads, Road Safety and Ports and Minister for Energy, Biofuels and Water Supply; and the Minister for Transport and the Commonwealth Games responded:

The government notes the coroner's view that a legislative gap exists between the Queensland Criminal Code offence of Dangerous operation of a vehicle causing death and the *Transport Operations (Road Use Management) Act 1995* (TORUM) charge of Careless driving.

The government notes the coroner's observation that Queensland, unlike some other Australian jurisdictions has no charge of negligent driving causing death.

Criminal negligence when driving, where death results, is already covered by the current criminal law. The crime of manslaughter carries life imprisonment. Criminal responsibility for manslaughter

in cases of dangerous driving is under section 289 of the Criminal Code which imposes a duty of care on persons in charge of dangerous things.

Section 328A (Dangerous operation of a vehicle) of the Criminal Code carries a maximum penalty of three years imprisonment and applies to a person who operates a vehicle dangerously in any place. The offence carries a number of circumstances of aggravation attracting higher maximum penalties. Dangerous operation of a vehicle causing death or grievous bodily harm carries 10 years imprisonment, increasing to 14 years if the offender was intoxicated or excessively speeding.

Section 328A provides that a person operates a vehicle dangerously if they operate the vehicle at a speed or in a way that is dangerous to the public, having regard to all of the circumstances. The test to apply is an objective test and does not require proof of criminal negligence. Therefore, it is an easier offence to successfully prosecute than vehicular manslaughter.

If a driver adopts a manner of driving which is dangerous to other road users having regard to all the circumstances, it does not matter whether they are deliberately reckless, careless, momentarily inattentive or even doing their incompetent best; they will fall within the ambit of section 328A. However, under section 328A for the driving to be dangerous, there must be some feature which is identified not as a mere want of care, but which subjects the public to some risk over and above that ordinarily associated with the driving of a motor vehicle, including driving by a person who may, on occasions, drive with less than due care and attention.

The TORUM offence in section 83 of Careless driving of motor vehicles, is less serious than the offence under section 328A of the Criminal Code. In order to make out the offence, the prosecution must prove that a person drove without due care and attention or without reasonable consideration for other road users.

The government notes that effect could be given to the coroner's recommendation by amending section 83 of the TORUM to create a circumstance of aggravation (punishable by a higher maximum penalty) that the careless driving caused the death of or the grievous bodily harm to another person.

A further aggravated penalty could apply where the driving caused the death of or the grievous bodily harm to another person **and** at the time of the driving, the offender had been disqualified from driving or was unlicensed to hold a driver license.

Further consideration of this proposal is required before the government responds to the coroner's recommendation.

On 30 January 2017 the Attorney-General and Minister for Justice and Minister for Training and Skills; the Minister for Main Roads, Road Safety and Ports and Minister for Energy, Biofuels and Water Supply; and the Minister for Transport and the Commonwealth Games responded:

The Queensland Government is currently considering amendments in relation to circumstances of aggravation for serious driving offences.

On 14 May 2017 the Minister for Main Roads, Road Safety and Ports and Minister for Energy, Biofuels and Water Supply responded:

The Department of Transport and Main Roads (TMR) is seeking government approval to draft amendments to the *Transport Operations (Road Use Management) Act 1995* (TORUM) to enhance road safety by ensuring the penalties for certain driving offences more appropriately reflect the seriousness of those offences.

Subject to government approval, proposed changes include an amendment to section 83 of TORUM to apply an aggravated penalty where the driver causes death or grievous bodily harm to another person. It is also intended to apply a further aggravated penalty if the person was unlicensed at the time of committing the offence.

The proposed changes to TORUM, as outlined above, alleviate the need to introduce a new mid-range offence.

On 26 February 2018 the Minister for Transport and Main Roads responded:

The proposed amendments to the *Transport Operations (Road Use Management) Act 1995* are scheduled to be considered by the Queensland Government. Subject to government approval, amendments to the *Transport Operations (Road Use Management) Act 1995* will be progressed for parliamentary consideration.

On 26 February 2019 the Minister for Transport and Main Roads responded:

The government amended the *Transport Operations (Road Use Management) Act 1995* to introduce a new higher maximum penalty for careless driving offences that result in the death or serious injury of a person. An additional new penalty, that is higher again, was also introduced for a careless driving offence that results in the death or serious injury of a person where at the time of the offence the offender was also unlicensed. A minimum mandatory licence disqualification period was introduced for these offences.

While a separate additional mid-range driving offence was not introduced, the new penalties achieve the coroner's aim of providing higher penalties for careless driving offences where there is a circumstance of aggravation. The government is confident that these legislative amendments will close the penalty gap.

The minimum licence disqualification period for the offence of dangerous driving causing death or grievous bodily harm (*s328A Criminal Code 1988*) was increased to 12 months.

The legislation commenced on 18 June 2018.