

Inquest into the death of Jo-anne Peta Fuller

Jo-anne Peta Fuller died on 6 March 2016 from fatal injuries received whilst driving her vehicle. She was struck head-on by a second vehicle which had crossed over the centreline of a busy main road.

Coroner David O'Connell delivered his findings of inquest on 25 October 2017.

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.

Further information relating the implementation of recommendations can be obtained from the responsible agency named in the response.

Recommendation 1

The present driving laws (s.83 TORUM, Due Care and Attention) be amended to have a specific circumstance of aggravation for driving without due care and attention where the offending driver causes grievous bodily harm or death; and a further circumstance of aggravation, if:

- i. the offending driver was then unlicensed; or
- ii. the offending driver was suspended or disqualified, at the time the alleged offence occurred, and that the government's announced amendments be passed into law within 1 month.

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

Responsible agency: Department of Transport and Main Roads.

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 did not hold a licence, was disqualified from holding a licence or whose licence was suspended at the relevant time. A minimum mandatory licence disqualification period of at least six months has also been introduced for these offences.

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 (s.328A *Criminal Code 1988*) was increased to 12 months.

The legislation commenced on 18 June 2018.

Recommendation 2

That 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 of Reckless Driving between the existing Criminal Code s.328A Dangerous Driving offence, and the TORUM s.83 Driving without Due Care and Attention offence, and for that review to within two months determine whether it is appropriate:

- (a) to include a circumstance(s) of aggravation for offending drivers:
 - (i) who cause death or grievous bodily harm, and
 - (ii) where they were driving whilst unlicensed or their license was suspended,
 - or
 - (iii) where they were driving whilst their license was disqualified; and
- (b) that the recommended new mid-range offence be legislated in the Criminal Code.

Response and action: the recommendation was not implemented.

Responsible agency: Department of Justice and Attorney-General.

On 11 September 2018 the Attorney-General and Minister for Justice and Leader of the House 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 coroner suggests that this legislative gap can be bridged by the creation of an offence midway between the Criminal Code and section 83 of the TORUM offence, of reckless driving.

The government does not agree that there is a legislative gap in coverage of culpable driving and considers that the range of culpable driving conduct is covered by the existing criminal offences.

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 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.

In order to establish the TORUM offence in section 83 of Careless driving of motor vehicles, the prosecution must prove that a person drove without due care and attention or without reasonable consideration for other road users. This offence therefore applies to driving that falls short of meeting the threshold of dangerous yet still demonstrates a want of care warranting criminal sanction.

As set out above there is no identifiable gap in the current criminal offences in capturing the spectrum of culpable driving. For this reason the government considers that a new Criminal Code offence of negligent or reckless driving would be wholly superfluous. The government therefore does not support recommendation 2.

The recent amendments to the TORUM provide for a tiered penalty regime (with significantly increased maximum penalties) for the TORUM offence in section 83 of Careless driving of motor vehicles. This appropriately signals to the courts that this conduct is to be met with much more significant punishment than is currently the case.

Whilst a new mid-range Criminal Code offence has not been introduced (in line with recommendation 2), the new penalties under the TORUM 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 and will sufficiently address the issues underpinning the coroner's second recommendation.