



Traffic Law in Western Australia

by

Mugliston, Ainsworth & Colebatch

Book Launch

The Hon Wayne Martin
Chief Justice of Western Australia

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WA Club

It is a great honour to have been asked to launch the book *Traffic Law in Western Australia* by Patrick Mugliston, Stuart Ainsworth and Dr Hal Colebatch.

Since my appointment as Chief Justice of Western Australia, I have spoken incessantly, almost to the point of tedium, about the importance of access to justice. What I mean by that expression is the access which ordinary Western Australians have to the justice system of this State. Of course the degree of access which they enjoy is multidimensional. It is not limited to questions like access to legal representation, or even access to the courts, It includes the capacity of Western Australians to access information about the laws by which they are governed, the process which will be applied if they are accused of breaching laws, and the consequences if they are found guilty.

Traffic law is the area in which Western Australians have their greatest chance of interaction with law enforcement agencies and the justice system. Although most people think they know the rules of the road, often their understanding is less than perfect. A book dedicated to the topic which is easy and enjoyable to read will assist people in understanding the laws which govern their activities on the roads.

And of course many people have little appreciation of the process the court applies when asked to decide on a breach of road laws. Neither do they know of the consequences that follow a guilty verdict. This very readable book will be a valuable resource to members of the community who wish to obtain information on these important points.

And that is not the only contribution the authors of 'Traffic Law in Western Australia' make to our community. They have magnanimously agreed to assign all their royalties to WA Police Legacy, a very worthy cause and another good reason for buying the book.

The launch of this book also provides an appropriate time to recognise the significance of traffic law in our community. Tragically, many more people die each year on our roads than are the victims of intentional homicides (by a factor of 10 or 15 times). Although significant advances have been made over the past 20 or 30 years in improving road safety, our road toll remains unacceptable. Recent years have seen a significant rise in deaths on country roads, often in single vehicle accidents and often involving drivers and passengers not wearing seatbelts. Not infrequently the accidents appear inexplicable to the police, emergency services and ambulance personnel that are required to attend the horrific scene. A recent model, well maintained vehicle will be found to have left a straight, flat, well marked road during good weather conditions and rolled over or collided with a tree, killing and injuring those in the car. Accidents of this kind legitimately raise the question of 'What can we do to prevent these tragedies?'

Our legislature has not been idle in responding to these issues and the public's debate has been vociferous. Anti-hoon legislation, laws reversing the onus of proof in the event of accidents involving drivers who have been drinking, and laws increasing minimum penalties have all been passed in recent years. Other changes are being discussed, including introducing locking devices that would stop a car from being started if the driver displays any evidence of alcohol consumption.

Traffic Laws in WA provides a very valuable database for the public consideration of these important issues, enhanced by the fact that it is written from the perspective of both prosecution and defence. One of the authors is a retired policeman with extensive experience in the area of traffic. The other authors are lawyers who have extensive experience in representing litigants who have been involving in alleged breaches of the *Road Traffic Act 1974 (WA)*. Its text is neutral and non-judgmental and uniformly informative.

I have also been impressed by the comprehensive nature of the work. It is difficult for me to think of any area of traffic law that has not been covered, and it is not limited to the rules and regulations which govern road use, it includes the procedures used by the police and the courts, including the important topic of sentencing.

Traffic cases often give rise to very contentious issues when it comes to the passing of sentence. One example concerns the penalty to be imposed in cases of inadvertently negligent driving causing death - such as the case of a driver falling asleep at the wheel. Public discussion occurs in a context in which we can all easily imagine ourselves in that situation. But it also occurs in a context in which the consequences may have been horrific, including the loss of a number of lives. The resolution of the competing considerations involved in a case like that at the time of passing sentence is a difficult task. Again, this book provides a very useful guide to the considerations properly taken into account when traffic offenders are to be sentenced.

The book focuses on traffic law and is intended for use by those involved in the day to day activity of investigating, prosecuting, defending and sentencing those who breach our traffic laws. And so, quite properly, it does not deal with controversial areas of government policy in relation to road rules.

However, there is one area of policy that I would like to take this opportunity to mention, and that concerns the disproportionate and oppressive impact which our traffic laws have on the residents of our remote communities, who are of course mainly indigenous. We have a large and diverse State with most of its inhabitants residing in the metropolitan area. Laws are quite properly fashioned with the majority in mind. However, those laws can work harshly when applied to the circumstances of indigenous people in remote communities.

These issues were brought home to me during a visit earlier this year to the Western Desert and 'the Lands'. In those remote places, there is no public transport. The roads are often very rough and have a destructive effect upon vehicles. The economic circumstances of the people who live in these communities preclude them from purchasing appropriate vehicles. The cars they can afford are either unroadworthy at the time they are bought, or soon become unroadworthy. And there are limited opportunities for obtaining driving licences in many of these places. There is also an understandable cultural disinclination to obtain, from a white person, a licence to pass over what is, after all, traditional Aboriginal land. And there is a legal question as to the extent to which such a licence is required for using roads on land under the control of an Aboriginal community, and which is not therefore a public road.

All these factors often lead to the arrest of indigenous people either driving without a licence or driving a car that is unroadworthy. Under laws that quite properly apply to metropolitan Perth, conviction of such an offence inevitably leads to a period of disqualification from holding a licence. But the reality of life in these communities is that the person may be required, by unavoidable circumstance to drive even while under disqualification. If they are caught again that leads to a further, even lengthier period of disqualification. And so the cycle continues. There are Aboriginal people in remote parts of the State who have never held a driver's licence, and who have no prospect of ever holding a driver's licence, because of the operation of the laws relating to mandatory disqualification. Eventually some of these people get to the point where imprisonment becomes the only sentencing option. In those circumstances, an Aboriginal person might find themselves imprisoned for a breach of traffic laws, even though they have never driven drunk or dangerously.

To take another example, the penalty for not wearing a seatbelt was recently increased to a fine of \$500. Given the profile of the road toll to which I have referred, that was entirely appropriate. However, if, say, six members of a family are found in a car without wearing seatbelts in a remote part of the State, the combined fines for that family will be \$3,000. That may be about one third of their total annual income. Obviously they have no prospect of paying those fines, with the consequence that further periods of licence disqualification are likely to follow, which in turn may lead to yet longer periods of disqualification if they drive during those periods.

Of course, I am not proposing one law for white residents in metropolitan Perth, and another law for the black residents of remote communities. The residents of those remote communities are as entitled to the protection of the traffic law, which is after all intended to secure their safety, as the residents of Perth. However, I do think it is time to give consideration to a degree of flexibility in the application of those laws, so that their impact on the residents of remote communities takes account of the circumstances in those communities

But I digress. The purpose of this function is to launch this important book, and it is a great pleasure for me to do so. I wish to commend the authors, Patrick Mugliston, Stuart Ainsworth and Dr Hal Colebatch on their scholarship and persistence in producing such a useful work that makes a contribution to enhancing access to justice. I am therefore pleased to launch this book and to commend it to all with an interest in the area.