

**Submission**

**No 37**

## **DRIVER AND ROAD USER DISTRACTION**

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**Position:** Chairman / CEO  
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# PEDESTRIAN COUNCIL OF AUSTRALIA

Safety - Amenity - Access - Health

*The Walking Class*

Patrons: Dame Leonie Kramer AC DBE & The Hon Sir Laurence Street AC KCMG

Mr Greg Alpin MP  
Chairman  
NSW Parliamentary STAYSAFE Committee

Dear Sir

**STAYSAFE: Driver and Road User Distraction (Inquiry)**  
**Submission from the Pedestrian Council of Australia**

Thank you for the invitation to provide a submission to your inquiry.

[http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/00B48A67FB42CCB5CA2579B90002A6E7?open&refnavid=CO3\\_1](http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/00B48A67FB42CCB5CA2579B90002A6E7?open&refnavid=CO3_1)

The PCA has long campaigned about this very serious problem and we congratulate STAYSAFE for putting it on their agenda.

We wish to break our submission into 2 parts:

- 1 Driver Distraction
- 2 Pedestrian Distraction

In our submission we sometimes will make references to various articles and publications, through the use of links, as they may take up considerable space. If you wish us to provide copies of these links, please let us know

**1 DRIVER DISTRACTTION**

In July 2005, I wrote an Opinion piece for the SMH entitled: Dialling death on the gadgets that drive us to distraction

<http://www.walk.com.au/pedestriancouncil/page.asp?PageID=1182&SiteID=1>

Most of the predictions I made in this article have not only come true, they are worse than expected. (QUOTE)

**Sydney Morning Herald - Wednesday 13 July 2005**

***Dialling death on the gadgets that drive us to distraction***

***Tough laws are needed to steer motorists away from the deadly diversion of new technology, says Harold Scruby.***

*Technology has been the great silver bullet over the past 10 years to significantly reduce death and injuries on our roads: safer cars, red-light cameras, radar and speed cameras, and even the ubiquitous mobile phone, which enables faster responses from high-tech emergency and medical services.*

*But the saving of life and limb through technology is under threat, ironically from technology.*

*A Monash University study revealed that using a legal hands-free (as opposed to an illegal hand-held) mobile phone while driving was the equivalent of driving with a blood-alcohol level of 0.08. An NRMA study found that text messaging while driving distracted drivers for 12 of every 30 seconds they spent writing the message. And the latest research, from Sydney University's George Institute for International Health, found that a person using a mobile phone when driving was four times more likely to have a crash that will land them in hospital. Importantly, it found that using a hands-free phone was no safer.*

*But there is much worse to come. The emergence of new technology, and its convergence with existing technology, will confound our legislators and enforcement agencies.*

*The mobile phone is quickly becoming a mobile TV, DVD player, GPS navigator, video-phone, emailer, internet navigator, newspaper, and probably babysitter and dishwasher.*

*Screens visible to the driver and fitted to vehicles are required to switch off when the vehicle is in motion. But this design rule does not apply to new mobile TV phones, equipped with web browsers. So if the evidence suggests that simply talking on a phone or texting is as dangerous as mid-range drink-driving, imagine how dangerous it's going to be on our roads when we all embrace this next generation of telephony.*

*And most new vehicles are being fitted with Bluetooth wireless technology, meaning there will be no need for a fixed cradle to support a hands-free phone. Drivers will just fiddle around, making and receiving calls at will.*

*The most difficult problem will be enforcement. If a police officer suspects a person is texting or watching a screen - even if they cannot see if that's the case - they can pull the driver over. But police are not permitted to search the person or the vehicle for evidence. The driver can simply put the device under the seat or in their pocket.*

*Furthermore, unless someone has been killed or seriously injured, privacy laws prevent police officers obtaining any information about the driver's incoming or outgoing calls.*

*These are just some of the reasons we should be concerned about the illegal use of hand-held mobile phones. Police just do not have the resources to catch even 1 per cent of drivers who are breaking the law. That is also the reason governments throughout the world have been reluctant to ban the use of hands-free mobile phones. Not because it's not dangerous - it's just almost impossible to enforce.*

*There are two laws under the Australian road rules that relate to this issue.*

*First: "The driver of a vehicle must not use a hand-held mobile phone while the vehicle is moving, or is stationary but not parked."*

*Second: "A driver must not drive a motor vehicle that has a television receiver or visual display unit in or on the vehicle operating while the vehicle is moving, or is stationary but not parked, if any part of the image on the screen: is visible to the driver from the normal driving position, or is likely to distract another driver."*

*As the new technologies merge, which law will the police use? Was the driver using a phone or watching a screen?*

*New laws allowing police to search for these devices must be in place. And legislation banning the use of hand-held phones and watching screens must be unified and simplified. Under NSW law, police can confiscate a radar-detecting device on the spot. So why not apply the same law to the illegal use of mobile phones and screens? The nuisance factor alone will deter most illegal users.*

*The deterrent effect is the only real solution. Clearly, the penalty of \$225 plus three demerit points is not working. If using these devices is as lethal as mid-range drink-driving, it follows that the penalties should be similar, as no one can argue that the behaviour is not deliberate. Instant loss of licence (or at least 10 demerit points, which is the law in Victoria for under-0.07 drink-driving) and a \$1000 fine would see a big change in this lethal behaviour and fewer deaths and injuries on our roads.*

*Legislators must act now before the road toll goes back to the days before random breath-testing. (END QUOTE)*

The use of hand-held mobile phones is out of control. Police do not have the resources to enforce this law. The penalties are clearly farcical, particularly when compared with the penalties for mid-range Dul.

Whether politicians have the guts to increase the penalties, which have only increased by the CPI in the last decade, is the big issue.

Consider this, the penalty for using a radar-detecting devices is 9 Demerit Points, over \$1,000 and confiscation of the device.

The practise has almost stopped.

Perhaps if the political will is not there to increase the penalties, but most importantly the Demerit Points, then why not consider a penalty for the second offence?

Why not consider automatic loss of licence for a second offence within 5 years and at least double the \$ penalty.

As for data, we suspect that the death and injury caused by the illegal use of these devices is far higher than expected. But data is very difficult to capture. Unless there is a fatality or very serious injury, police do not normally acquire the data about the phone usage at the time of the crash.

Additionally, if a driver were texting at the time of the crash, but had not sent the message, it would be very difficult to determine that this may have been the cause of the crash.

And as Police do not attend crashed where both vehicles can be driven away and no-one is injured, there is further lack of data as to the possible causes of these crashes, especially rear-end crashes.

We would like to suggest to STAYSAFE that you ask the Insurance companies to provide data on rear-end crashes over the past decade. Anecdotally, we believe many of these crashes would have been as a result of a driver being distracted by some sort of device.

If the data shows a significant spike, while not conclusive, it could be presumed that many of the crashed were caused by driver distraction from mobile phones, MP3 players etc...

### **Drivers Are Allowed to Use Noise Cancelling Earphones While Driving**

In one of the most inane pieces of legislation, drivers are not permitted to play loud music while in a motor-vehicle (heavy fine and demerit points), but they are permitted to use noise cancelling earphones. These earphones block all exterior sounds, meaning a driver cannot hear sirens or horns or the sounds of other vehicles, or even cyclists or pedestrians screaming at them when there is danger. This behaviour should be banned without delay and stiff monetary and Demerit Point penalties introduced.

### **Outdoor Advertising – Street Furniture**

Attached is a PDF of a Power Point presentation we gave to the House of Representatives Committee on Social Policy and Legal Affairs on Friday 25 March 2011. It covers most of the



issues relating to Outdoor Advertising and Street Furniture and should form part of our submission.

The effects of outdoor advertising cannot be under-estimated. A decade ago, JC Decaux signed a contract with the City of Sydney. They placed billboards in front of most of the pedestrian crossings around the Sydney CBD. They obstruct the line of sight of motorists approaching these crossings and the line of sight of pedestrians using the crossings.

Yet in 2002, the Supreme Court of NSW in *Bussell vs Campbelltown Council* decided unanimously that the authorities must provide adequate "line of sight" at these locations. This was only referring to pedestrian "refuges". Yet the CoS ignored this requirement and many of their pedestrian crossing throughout the CBD. Perhaps the worst example would have to be at Pitt Street at Martin Place where they have built a large news stand on the footpath extension, completely blocking line of sight for both pedestrians and motorists.

<http://www.walk.com.au/pedestriancouncil/page.asp?PageID=382&SiteID=1>

But to add insult to injury, these outdoor advertisements now scroll. JC Decaux claim: 'Research published by JC Decaux last year suggested 'two-thirds of people look towards a site when it scrolls, drawn by the movement, and of those two-thirds, nearly 100 per cent go on to look at the following panel.

<http://www.walk.com.au/pedestriancouncil/page.asp?PageID=383&SiteID=1>

<http://www.walk.com.au/pedestriancouncil/page.asp?PageID=396&SiteID=1>

It must be understood that Councils do not pay one penny, not one red cent, towards the costs of road trauma, which costs NSW over \$8 billion per annum. Those costs are borne by insurers and state and federal governments. It follows that they will care all about the revenue and nought about the consequences and costs of road trauma. It is obvious that the CoS did no risk assessments when they permitted JC Decaux to place these outdoor advertising devices all over the CBD and the CoS generally.

<http://www.walk.com.au/pedestriancouncil/Page.asp?PageID=383>

In its 1995 publication, *Road Environment Safety - A Practitioner's Reference Guide to Safer Roads*, the Roads and Traffic Authority (RTA) states: 'Landscaping and other street furniture must not obstruct visibility between vehicle drivers and pedestrians.' In 2000, the RTA commissioned a comprehensive study by Ove Arup to examine the safety aspects of street furniture and to provide guidelines for its location. In spite of repeated requests by the PCA, that report has never been released.

### **Variable Message Signs VMSs**

These very serious driver distractions are covered in our attached PDF.

While the RMS (RTA) has a very strict Technical Direction) which is legally enforceable, until recently, they have refused to enforce their own laws.

Mr Craig Moran, of the RMS, who signed the latest TD, has informed us that a review is under way and that the RMS should be in the position to have better enforcement capabilities by mid-June.

Since presenting our PP to the Australian Parliament, the use of VMSs around Sydney and NSW has worsened significantly, for 2 reasons:

- 1 There are many more of them as advertisers see the enormous benefit in promoting their products and services
- 2 They are becoming far more dynamic – we believe it's not far off when they will become the same as large TV screens

Some Councils, such as Willoughby have a zero tolerance for these devices and issue on the spot penalties up to \$3000 to any person or organisation using them in their municipality.

Others such as Pittwater ( we undertook an FoI and discovered that senior Council officers were actually quashing parking penalties issued to these trailers (vehicles) parked illegally on footpaths or nature strips. We also discovered they were actually charging organisations to use these dangerous driver distractions. Photos of these VMSs are attached, including one which was illegally parked in a schoolzone for over a week advertising a ski sale

Please read the correspondence from Ms Ann King to us of May 2010. She states:

***Thank you for your email to the Director-General, Department of Transport and Infrastructure about a variable message sign on the road reserve adjacent to Pittwater Road at Narrabeen. The Director-General has asked me to respond on his behalf. I have taken careful note of your concerns.***

***The Roads and Traffic Authority (RTA) has informed Narrabeen Golf Centre that the variable message sign adjacent to Pittwater Road is unauthorised and the sign has been removed.***

***The RTA will provide information to the Golf Centre confirming that the land in question is the property of the RTA and not the Golf Club.***

***The RTA is committed to ensuring the road environment IS safe. This includes the placement of advertising and sign age in and near the road.***

The VMS returned within a month (photo attached) of this letter and has been there almost ever since. Until we wrote again recently, there was no attempt made by Ms King or the RTA/RMS to check whether it had returned or to enforce its own Technical Directions.

Yet the RTA/RMS has the strictest guidelines for the use of its own VMSs.

This RMS must commence vigorously enforcing its own TDs for VMSs both on public land on private property.

## **Cyclists**

To the best of our knowledge there are no laws prohibiting cyclists from using mobile phones, texting or wearing noise cancelling head phones. This should be addressed with significant penalties applied.

## **2 PEDESTRIAN DISTRACTION**

### **Electronic Hand Held Devices**

As the major and most vulnerable road users, pedestrians must take a lot of the responsibility for their dangerous behaviour when crossing the road, especially when using mobile phones, texting, MP3 players and/or noise cancelling headphones.

18 months ago we launched the campaign LAMBS TO THE SLAUGHTER – WAIT FOR THE GREEN

[http://www.walk.com.au/pedestriancouncil/images/elements/contentpics/2010/Lambs\\_Portrait\\_HR.pdf](http://www.walk.com.au/pedestriancouncil/images/elements/contentpics/2010/Lambs_Portrait_HR.pdf)

The concept was developed around the behaviour of many pedestrians who often behave like sheep when crossing the road, particularly at traffic lights. Many are either listening to iPods & MP3 players or using mobile phones. When one sheep walks the rest follow without stopping, looking and listening. The ad seeks to highlight the dangers of this potentially lethal behaviour and hopefully create significant behavioural change

Just recently, we launched a new campaign entitled: DON'T TUNE OUT – STOP LOOK LISTEN THINK

[http://www.walk.com.au/pedestriancouncil/images/elements/contentpics/2012/DONT\\_TUNE\\_OUT.pdf](http://www.walk.com.au/pedestriancouncil/images/elements/contentpics/2012/DONT_TUNE_OUT.pdf)

It's an attempt to address the same problems.

One of the main issues in relation to this lethal behaviour is the lack of data.

When a police officer attends a pedestrian "crash" he or she has no boxes to tick.

Because a pedestrian who has been using one of these devices is usually to blame or at least contributing to the incident, he or she is unlikely to admit to being the cause.

The law states very clearly that pedestrians must cross the road with safety.

We have had discussions with Police and are hopeful that we can have a system which requires attending police to ascertain whether the victim was using an electronic mobile device. Perhaps interviewing witnesses could be part of this requirement.



## **Line of Sight (Most Councils care far more about providing on-street parking and revenue than Road Safety)**

One of the most critical aspects of road safety is line of sight. If road users can see each other, they can often avoid a crash and road trauma.

As stated before, because Councils do not pay a penny towards the costs of Road Trauma, frequently, they care far more about maximising on-street parking and the revenue from Parking Meters than creating adequate line of sight as recommended in the RMS's Technical Directions, the Australian Road Rules and confirmed in *Bussell vs Campbelltown Council*. More on-street parking often means more shopping, which means higher rates.

There is an in-built conflict of interest.

Attached is a PDF entitled Case Study North Sydney Council.

It shows a vitally important case of a pedestrian crossing at North Sydney on Berry Street. Where the TDs and ARRs require 20 metres line of sight at on the approach to a pedestrian crossing and 10 metres on the departure, North Sydney Council has provided a couple of metres either side. In 2006 at a Traffic Committee Meeting, the Mayor Genia McCaffery asked Mr Scruby to stop making exaggerated claims, saying "if we follow these guidelines we'll virtually lose parking all over North Sydney".

"20m is an extraordinary amount: this has huge implications," she said.

Since then, the police, the RTA, the Regional Traffic Committee, the D-G of Transport and the Minister have all written to her asking her to remove the meters. 6 years later they remain.

The other attachment shows how Councils, particularly North Sydney, have placed Pedestrian Refuges all over North Sydney, while providing little or no line of sight. Some are directly in front of bus stops.

Obstruction and distraction are the same, when it comes to road safety. If your attention is diverted or obstructed, trauma can follow.

The RMS does have absolute authority over all roads. The RTA vs Lane Cove (Greenwich - attached) court case confirmed this. But for reasons unknown, they refuse to use their authority.

The position of signage around crossings should be the subject of a state-wide audit and Councils should be required to provide the statutory line of sight at all these locations including Pedestrian Refuges.

In the immortal words of future Head of State, HRH Prince Charles (quote): "The whole of the 20th century has always put the car at the centre. So by putting the pedestrian first, you

create these liveable places I think, with more attraction and interest and character ...  
liveability."

Regards

Harold

Harold Scruby  
**Chairman/CEO**



**Pedestrian Council of Australia Limited**

*The Walking Class*

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