

# Dangerous Driving in Western Australia

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Accident Investigation Services Pty Ltd, Sydney, December 2003

Article published in Momentum Journal Volume 11 No. 3.

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For those of you following the news in recent times, you may have observed that the Police and Judiciary in Western Australia have been in the headlines over a number of alcohol related fatal motor vehicle collisions involving drivers that were over three times the legal alcohol limit to drive. In each case, the police were of the view that the manner of driving was not dangerous to the public, which resulted in the drivers being charged over the fatalities for the lesser traffic offences of either DUI or PCA.

Indeed, I have had lengthy discussions with a senior WA police crash investigator in recent years over the very same issues, where it was suggested to me that in WA, the charge of dangerous driving required some form of overt driving act of excessive speed or negligent driving which was actually dangerous to the public. Notably, even WA Magistrates have been quoted in local papers using similar comments.

This of course seems contrary to the spirit of their own state legislation. Section 63 of the *WA Road Traffic Act 1974*, provides that a person with a blood alcohol concentration (BAC) of or exceeding 0.15% shall be deemed to be *under the influence of alcohol to such an extent as to be incapable of having proper control of a motor vehicle*.

You may be interested to know that the WA drink driving cases referred to above involved drivers with BAC levels above 0.15%g. So, in terms of what constitutes dangerous driving in WA, where is the problem?

There are a number of WA Supreme Court of Appeal cases and many other Australian superior court decisions, which quite plainly give directions as to what constitutes “dangerous driving”, i.e. for a driver’s actions to be dangerous, the manner of driving must be, in all the circumstances, ***potentially dangerous*** to the public.

Ironically, this very concept of dangerous driving was enforced by WA police in a recent driving matter where a Perth woman pleaded guilty to a charge with dangerous driving after allegedly tying a baby seat with her 20-month-old toddler in it to a broken door in the back seat of a car. Police claim they saw the car door swing open as the woman travelled through a roundabout. Police say the woman told them she had not considered her actions might endanger the child. She said the door could not be secured so she tied the baby carrier to it to keep it closed.

What would the WA crash investigation police say about this case? The woman was just driving normally through a roundabout! There was no accident, nothing about her driving that was negligent or involved excessive speed!

Of course this was a classic example of what constitutes dangerous driving in which the WA police got it right and had no problems taking action against the driver, nor it seems did the Court have any problem accepting a plea of guilty. It was indeed the woman's adverse attitude in driving the vehicle, coupled with the baby's exposure to danger, the **potential danger** in all the circumstances, which gave rise to the offence of **dangerous driving**.

And so its no wonder the WA public are concerned and have spoken strongly through the media, which has now prompted the WA Attorney General, Mr Jim McGinty announcing recently that planned legislative changes will require drunk drivers who harm others to prove their driving was not dangerous. *What does one make of that news!*

Mr McGinty's comments were quickly followed by a response from the WA Criminal Lawyers Association President Mr Hylton Quail, who said that the Government's response was farcical as existing WA laws allowed for dangerous drivers to be charged. I couldn't agree more!

Getting back to basics, why is it that just about everywhere in the civilised world it is unlawful to drive a motor vehicle whilst under the influence of alcohol? How was it that these laws came about?

Well it's not difficult to recall that it was due to the horrendous road carnage all over the world that was, and continues to be directly related to people driving under the influence of alcohol. In simple terms, it was recognised by communities and authorities abroad, that the public had to be protected from these irresponsible people who drove whilst under the influence of alcohol, as they were substantially over-represented in vehicle crashes and it is potentially dangerous to the public to suffer their presence on public roads.

Research by forensic pharmacologists around the world has resulted in an overall acceptance within the international crash investigation and legal communities, that a BAC of equal to or greater than 0.10%g is a level at which all people are affected to the extent that their cognitive and motor functions and therefore general driving ability is significantly impaired. Many countries and indeed many states within Australia, including WA, have enacted legislation governing various BAC levels and associating them directly with dangerous and aggravated driving.

So where is the problem? Well, instead of reviewing dangerous driving legislation, perhaps the WA public would be better served redressing education, training and competence levels within the WA government departments responsible for enforcing such laws.