



Liberal Democrats Victoria

Submission

Inquiry into the increase in Victoria's Road Toll

June 2020

Contact

LDP Administration Ltd.
Level 6, 40 City Rd. Southbank VIC 3006
PH. (03) 9674 7381
admin@ldp.org.au

Contents

Executive Summary 3

Summary of recommendations 4

Reducing the age of the light vehicle fleet 5

 Recommendation 1..... 5

 Recommendation 2..... 5

Roadside Drug Testing, Impairment and Deterrence Theory 6

 Recommendation 3..... 10

 Recommendation 4..... 10

Inappropriately Low Speed Limits 11

 Recommendation 5..... 13

References 14

Executive Summary

The Liberal Democrats would like to see a lower road toll. Sensible laws, enforcement policies and regulations can achieve an appropriate balance between ensuring responsible driving and allowing the freedom of movement for Victorians. We believe that there can be a lack of appropriate balance applied to setting appropriate speed limits and the enforcement approach of our drug driving laws. A tendency towards, lower limits, or more enforcement does not always result in the safer outcomes expected.

Shifting the focus of our drug driving laws towards an impairment-based model would improve safety, community support and justice. Within the Safe Systems guidelines for setting speed limits there are roads in Victoria that would be appropriate to trial higher speed limits. This has the potential to improve the efficiency of movement on these roads and reduce fatigue related incidents. Safer vehicles are already a policy focus of our road safety authorities and improving the affordability of newer cars with the best safety features could significantly improve road safety. Repealing taxes that increase the costs of these safer vehicles is one of the easiest ways to improve affordability and get these safer cars on the roads quicker.

Summary of recommendations

Recommendation 1

Repeal the Federal Luxury Car Tax and new vehicle import tariffs.

Recommendation 2

Repeal the Victorian Super-Luxury Car Tax.

Recommendation 3

Establish a medical advisory committee to determine appropriate thresholds for impairment based roadside drug testing.

Recommendation 4

Continue to investigate emerging technology to improve the accuracy of oral saliva testing equipment and other technology to target impaired driving.

Recommendation 5

Implement a trial of higher speed limits in line with the Safe System specifications on sections of the Hume Highway.

Reducing the age of the light vehicle fleet

The average age of Australia's light vehicle fleet is about 10 years. A 2017 report produced by Economic Connections on behalf of the Australian Automobile Association estimate that reducing this by one year would result in a 5.4% reduction in crashes and 1,377 fewer fatalities in Australia over 20 years. It would also produce \$3.3Billion in direct government savings and \$19.7 Billion in broader economic benefit.¹ While there might be options for safer vehicles in all price ranges, reducing the costs of the newest vehicles with the best safety innovations will offer the greatest benefit.

On 8 September 2017 an inquiry into the National Road Safety Strategy 2011–2020 was announced by the then federal transport minister Darren Chester. This review offers useful recommendations on removing barriers on the importation of safer vehicles. Recommendation 7 is to “Implement rapid deployment and accelerated uptake of proven vehicle safety technologies and innovation.” Two actions suggested to assist with this were to revise the luxury car tax and abolish tariffs on vehicle imports with high safety performance.²

While the Liberal Democrats always believe in lowering taxes, the luxury car tax is a particularly bad tax. It was implemented, and then increased, to protect a domestic car manufacturing industry which no longer exists. The luxury car tax and the import tariffs reduce economic activity, harm consumers and reduce road safety. In 2019 the Victorian Government chose to add another tax on top of this at 7 per cent for vehicles priced over \$100,000 and an extra 9 per cent for cars valued at higher than \$150,000. Both the federal luxury car tax and the Victorian super-luxury car tax should be immediately abolished along with the import tariff.

Recommendation 1

Repeal the Federal Luxury Car Tax and new vehicle import tariffs

Recommendation 2

Repeal the Victorian Super-Luxury Car Tax

Roadside Drug Testing, Impairment and Deterrence Theory

To understand how our current drug driving detection and enforcement policies work, it is critical to understand deterrence theory and how it applies to this policy. There has been a lack of adequate research into how effective this policy has been in deterring drug impaired driving in the general population. Broad assumptions that the successful application of this approach in addressing alcohol impaired driving can be easily transferred to drug driving policy are not well supported. Policy makers have also failed to acknowledge responses to RDT programs that undermine not only the success of RDT but drink driving detection.

The National Drug Driving Working group 2018 report, "Australia's second generational approach to roadside drug testing" states in the first line of the executive summary: *"The most defining element of Australia's overall approach to drug driving is deterrence."*

The executive summary concludes:

"Australia has historically had a harmonised approach to drug driving enforcement and this was built on the notion of deterrence. As we move into developing our 'second generational' approach to drug driving it is important, at this juncture, to reaffirm and clearly articulate this theoretical and philosophical underpinning. It is this clearly defined and strategic deterrence approach which will underlie and guide jurisdictions individual future responses and maintain our international leadership in this area of reducing the impact of death and injury on our roads."³

Despite being described as the most defining element of the above policy, little effort has gone into understanding whether policies focused on deterrence theory are well implemented or effective.

A 2017 Australian Roadside Drug Testing Scoping Study noted:

"One outcome from this research is that there needs to be a better overall understanding of deterrence theory among those who develop policy and operations. Yet there is little if any research into the area of 'what does a deterrent approach and strategy look like for drug driving'."⁴

The underlying premise of Classical Deterrence Theory is that the perceived consequences of engaging in illegal behaviour will dissuade such behaviour. Specifically, the theory holds that when an individual perceives the certainty of apprehension as high, the punishment as severe, and the administration of punishment as swift, then the committing of criminal acts will be deterred. General deterrence stems from public awareness of legal sanctions, whereas specific deterrence operates at the individual level based on direct experience of legal sanctions. This classical framework fails to account for vicarious experience such as; vicarious punishment experience and vicarious punishment avoidance.⁵

While the aim of enforcement operations aims to reduce the prevalence of drug impaired driving, the current policy of oral fluid testing applies a zero-tolerance approach to any detectable amount of Cannabis, MDMA or Methamphetamine. The Victorian Law Reform, Road and Community Safety Committee's *Inquiry Into Drug Law Reform* report tabled in 2018 summarised some of the issues with our current zero tolerance approach.⁶ Despite highlighting significant issues, the recommendations for an in-depth review have received scant attention, and there appears to be little desire to alter the status quo.

Broad RDT oral fluid testing undoubtedly apprehends drug impaired drivers, however, it is also inevitable that drivers who are unimpaired are also punished. We currently have no way of ascertaining how many drivers were genuinely impaired and how many simply had trace amounts of an illicit substance in their system.

The national drug driving working group stated in their 2018 report:

"Drug driving legislation centres around the operation of a motor vehicle and not the possession or use of a drug. It is focused on the harms associated with drug use and deals with the offender in terms of a traffic offence."

For those that consume alcohol, there are clear and reputable guidelines on waiting periods between drinks, the time that it takes alcohol to leave the system, etc. Conversely, for people that consume illicit drugs and wish to comply with road laws, there is a lack of clarity on how to do so. General advice from reputable organisations is difficult to find, but when they do answer, it is suggested that it is unlikely that substances could be detected after 48 hours. A Transport Accident Commission (TAC) advertising campaign has run on television to this effect. The intention may have been to improve the deterrent effect of operations, but it also demonstrated that the current approach is unjust with a driver who appears well rested, sober and unimpaired, being caught for drug driving. The Liberal Democrats believe that this application punishes safe drivers and whether intended or not, results in policing drug use rather than driving offences.

Because drug use itself is a crime, such considerations are frequently dismissed. This is a mistake, as drug use and possession are not the domain of road safety laws, nor of policy experts in this field. Just as the policy intent aims to separate drug use from driving, considerations of the morality or legality of drug use should be set aside from a discussion of drug driving laws. The focus then becomes more appropriately on how to target laws and policies most effectively to dissuade drug impaired driving rather than drug use itself.

Cannabis is the most widely used illicit drug in Australia and responsible for a large percentage of positive tests in RDT operations. A recent Canadian study looked at the acute and residual effects of cannabis use on driving ability. The study demonstrated that cannabis-affected drivers show some signs of impairment, along with reduced driving speeds in the acute phase but there was little evidence of residual effects.⁷ There is a large

body of evidence demonstrating that cannabis can be detected days after use. The Canadian study tested people up to 48 hours after use.

Take the example of two people, both whom have consumed the same amount of alcohol at a pub on a Friday night. Our current approach, if applied to alcohol, would fail to distinguish between one of whom is stopped on the way home from the pub, clearly intoxicated, and the other who is stopped driving to church on Sunday. Few people would argue that both should receive the same punishment, but this is the policy applied to drug driving. Some recent cases highlight the legal tension in this approach. In 2016 a NSW Magistrate dismissed a drug driving case on the basis of "honest and reasonable mistake". The man was detected with cannabis in his system from consumption days earlier. The ABC reported comments in the court from the arresting officer;

The arresting police officer told the court that "a line had been drawn" and that now you could be "a smoker and not drive, or a driver and not smoke" and that that was the "effect of the new laws".⁸

Medical cannabis laws further complicate matters. Earlier this year a Magistrate in Adelaide dismissed a drug driving case involving a patient who was using a medical cannabis product to treat his multiple sclerosis. Once again, there was no allegation that the driver was actually impaired at the time.⁹

In testimony to the Law Reform, Road and Community Safety Committee, Dr Kate Seear, Senior Lecturer in Law at Monash University, indicated that the Road Safety Act 1986 will only be effective from a road safety perspective if it targets 'people who are actually impaired at the time of driving'.¹⁰ Professor Alison Ritter, Director of the Drug Policy Modelling Program at the National Drug and Alcohol Research Centre was also critical of the current zero tolerance approach, stating:

"...if this is about road safety, and we need to assess impairment or the likelihood of a risk of causing an accident or having an accident, and the presence of drugs in a bodily fluid, whether that is saliva or blood, is not associated inevitably with having an accident...It makes a mockery of road safety laws."¹¹

Our laws are supposed to only punish the guilty. The current testing regime fails to adequately distinguish between people who are guilty of driving while impaired and those who are only guilty of consuming an illicit drug in a period prior to driving, but not within a period during which they are impaired by the effects. The Liberal Democrats reject this law in principle as there is no protection for recreational or medicinal cannabis users, nor other drug users, who pose no danger to road safety.

Punishment avoidance and vicarious punishment avoidance are significant factors in whether the policy achieves a deterrence effect. The accuracy of the testing devices themselves will contribute to this. A 2019 Australian study found that the rate of failure in the Securetech Drugwipe and Draeger devices used by Victoria Police was unacceptably

high.¹² The rate of false positives confirms the need for laboratory confirmation of samples. The rate of false negatives should be of concern however as this contributes to both direct and vicarious punishment avoidance which is a strong factor in undermining deterrence.

Although we were unable to find any published research, we believe that Facebook groups that allow people to post locations of police operations and the popularity of the Waze app that does the same may be partially driven by a common view that RDT operations are unjust. Ninety-seven percent of Australians support RBT enforcement operations.³ This would suggest that it is RDT operations, rather than RBT operations, that members of the community are facilitating the avoidance of. The current policy response favours doing more testing in more places. If our current laws are viewed as unjust by many cannabis users, it is unlikely that they will ever attract the broad support that drink driving laws do.

Section 55A of the Road Safety Act 1986 covers the procedure for assessing drug impaired drivers. Although reducing drug impaired driving is the aim this procedure is rarely used. David Limbrick, MP in the Victorian Legislative Council, on 30/4/2019 questioned the Police Minister on how many of these impairment tests were conducted, and in response, was advised that in 2016, 2017 and 2018 there were; 179, 192 and 133 assessment. This is compared to the plans highlighted in the Victoria Police Annual Report 2018-2019 to expand the number of RDT from 100,000 to 150,000. Conducting an expansive RDT program for only three illicit substances while conducting very few drug impaired driver assessments fails to address drivers who may be impaired from the use of other licit or illicit substances.

One unintended consequence, particularly at festivals which are frequently the focus of targeted operations, is people consuming another drug which isn't tested for. As Dr Monica Barratt highlighted to the LRRCS Committee in 2018,

"One of the unintended consequences is that potential shift to other drugs. We look at cannabis, amphetamines, MDMA, and we do not look at this vast other list of psychoactive substances here in Victoria. So it is sort of saying, 'Well, these are the most popular. Let's look at these and let's make sure people are not driving under the influence of these'. But certainly when it comes to festivals and people knowing, people are targeted as they leave festivals — LSD, cocaine, GHB, ketamine and a whole list of other drugs that can be taken in the festival environment, including the novel psychoactive substances. So is that what we are trying to do? I think that is an unintended consequence of the way the drug-driving testing laws are right now."⁶

The challenge of understanding and applying an evidence informed approach to drug driving laws based on a correlation of saliva or blood concentration to impairment is a significant one. To ensure that our laws are fair, scientific, and supported by both the general population and the target population it is critical to take this step. In 2012 Norway updated their drug driving laws and established impairment limits for drug driving offences. These

limits, commonly known as “Per se” limits were based on expert medical opinion based on a review of published literature.¹³

This approach, while still imperfect represents a commitment for a fair and evidence informed process. The policy covers 20 substances and, importantly, includes prescription substances with an establishment relationship with increased crash risk. People using these substances within the prescribed guidelines of their doctor are excluded. A 2020 paper showed that there was no increased risk of arrest for the therapeutic use of benzodiazepines, demonstrating that it is possible to apply both scientific pragmatism and technology to combat drug impaired driving without negatively impacting appropriate medical use.¹⁴ Importantly these regulations are not static and are subject to review, with Per Se concentration limits updated and additional substances added as the body of scientific evidence grows. For substances where it can be known, this also includes a scale of penalties based on the degree of impairment. This approach would more suitably align drug driving laws with drink driving laws in Victoria.

Recommendation 3

Establish a medical advisory committee to determine appropriate thresholds for impairment based roadside drug testing.

Recommendation 4

Continue to investigate emerging technology to improve the accuracy of oral saliva testing equipment and other technology to target impaired driving.

Inappropriately Low Speed Limits

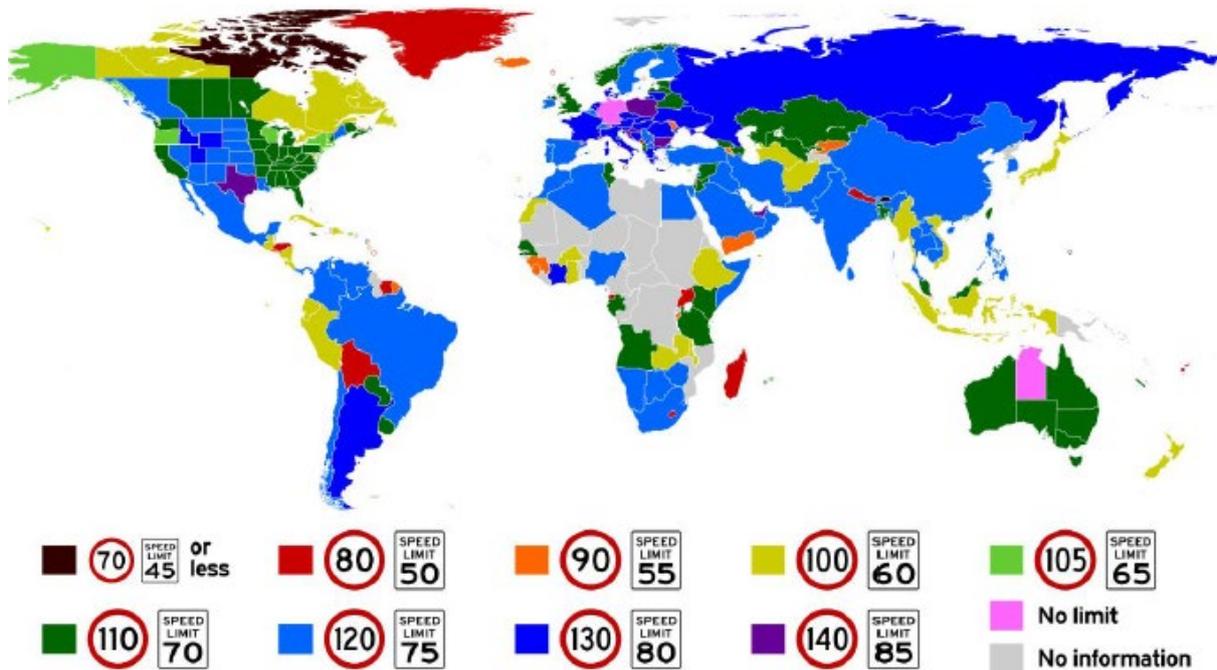
There are currently sections of the road network in rural Victoria which have speed limits that are much lower than the technical standards of the roads and the vehicles now on them. There are two ways of demonstrating this – one is to infer from the fact that road and vehicle engineering have improved over time but speed limits have not increased – the other is to refer to the methodology of the Safe System which infer higher permissible speeds than are currently set on many Victorian roads. This section of the submission will dwell on the second but would recommend reading of Submission 48 to the Australian Parliament House Senate Standing committees on Rural and Regional Affairs and Transport inequity into aspects of road safety in Australia, 2015 for discussion on the first.

The selection of speed limits within our current framework of road safety is predicated on the notion that no loss of safety is acceptable and therefore that mobility must be a function of safety. The Liberal Democrats have never accepted this predicate and think the revealed preference of the majority of society also indicates a rejection of it – both groups clearly believe that mobility and safety have a dynamic relationship. Nonetheless the Liberal Democrats think it is clear that even if the Safe System and Towards Zero strategies and methodologies are accepted as a given, then they still recommend higher speed limits on many Victorian roads than we currently see.

Within the Safe System framework, adopted as national and state policy, the permissible speed limit for a road is derived from the technical attributes of the road. From the seminal Australian work on this topic “Vision Zero – An ethical approach to safety and mobility”¹⁵ we get the following table:

Type of infrastructure and traffic	Possible travel speed (km/h)
Locations with possible conflicts between pedestrians and cars	30
Intersections with possible side impacts between cars	50
Roads with possible frontal impacts between cars	70
Roads with no possibility of a side impact or frontal impact (only impact with the infrastructure)	100+

Further interrogation of international sources based on the same system reveals that the “100+” category is interpreted as “130km/h” elsewhere. Note the following graphic which depicts maximum speed limit by jurisdiction:¹⁶



Australia has amongst the lowest highway speed limits in the world, including those jurisdictions which also use the Safe System to determine the safety features of their roads. Put simply, the Australian road safety industry appears to have a bias for maximum speed limits considerably lower than the limits that our road safety paradigm recommends as appropriate.

It is clear there are many sections of the Hume Highway between Wodonga and Melbourne, as well as other rural roads, that meet the criteria for speed limits of at least 130km/h. Traffic is now separated by crash barriers that mitigate the risk of frontal collision. Sliplanes exist that mitigate the risk of side collision. Even the risk of impact with infrastructure, a mitigation not considered necessary under the Safe System, has been mitigated. Visibility is generally excellent, and traffic is seldom heavy. One challenge is the presence of freight vehicles which operate at a maximum speed of 100km/h due to other road regulations, however the difference in speed of 30km/h is deemed acceptable even for pedestrians within the Safe System and so considering it unacceptable for highway driving appears to be an isolated and unjustifiable demand for rigor – it seems clear that more rigorous enforcement of undertaking regulations and use of left-hand lanes by heavy vehicles would mitigate these risks in any case.

These conditions are not uniform across rural roads or even for the entirety of the Hume Highway. Road users have an expectation that money taken from them in fines, fees, excise and taxation will be spent to produce the road network that meets their need. Put another way, road users expect the road to be of sufficient quality to permit them to drive at the speed they wish and rightly believe that they are already giving the government enough money to achieve this. It is unacceptable that the highway system is not uniformly capable

of supporting speeds of at least 130km/h and motorists correctly view this as a sign of unacceptable government inefficiency. Those sections which are capable of supporting the higher speed now should have that speed limit now, and those sections which are not should be rectified out of extant and generous revenue streams.

The reason that, even within a Safe System paradigm, there is an imperative to consider higher highway speeds is that trip duration is a major contributor to driver fatigue related accidents on rural roads, which are numerous.^{17,18} Estimates vary, but the TAC estimates that 20% of fatal Victorian road accidents involve driver fatigue.¹⁹ The effect of fatigue on driving ability is well understood and it is well known that the risk increases with greater driving times, independent of rest periods taken. It is also understood that these fatigue related accidents are most common on rural roads, where driving distances are greatest and speeds tend to be most inappropriately low. Simply put, the bias against appropriately high speed limits which is seen to improve safety in urban conditions results in inappropriately low speed limits that expose rural drivers to greater risk.

For example, an increase in the speed limit on the Hume Highway to 130km/h would reduce the duration of travel between Craigieburn and Wodonga from about two hours and forty minutes to two hours and ten minutes – 30 minutes fatigue related risk removed. Going further, if the Hume Highway were all 130km/h then the duration between the exits at Craigieburn and Campbelltown on the outskirts of Melbourne and Sydney would be reduced from about seven and a quarter hours to six and a quarter hours – an hour of fatigue related risk removed. Naïve assessment would suggest that this reduces fatigue related risk by about a fifth, but risk of fatigue related accidents is not static per hour travelled either – the time removed by a higher speed limit is time from the end of the trip when fatigue risks are greatest, so the effect should be substantially more than 20%, independent of other fatigue management strategies.

It is clear to the Liberal Democrats that there is a dogmatic view that higher speed limits are always less safe within some parts of the road safety bureaucracy. Despite this, even within the current road safety paradigm high speed limits improve safety in cases where roads and vehicles are designed to accommodate the higher speeds. Inappropriately low speed limits contribute to fatigue related fatalities, particularly in rural areas. Appropriate sections of the Hume Highway should be increased in speed to 130km/h as a pilot programme to verify that there is no loss of safety in keeping with the Safe System methodology prior to wider rollout. It should be expected that there will be no significant loss of safety and that there would be a reduction in fatigue related fatalities by personal vehicles on the route.

Recommendation 5

Implement a trial of higher speed limits in line with the Safe System specifications on sections of the Hume Highway.

References

1. Phil Potterton and Anthony Ockwell, *Benefits of Reducing The Age Of Australia's Light Vehicle Fleet* (2017) Economic Connections Pty Ltd
2. Jeremy Wooley and John Crozier, *Inquiry into the National Road Safety Strategy 2011-2020* (2018) Commonwealth of Australia 2018
3. National Drug Driving Working Group. Australia's second generational approach to roadside drug testing [internet]. Department of Infrastructure, Regional Development and Cities of the Australian Government, 2018. Available: https://www.infrastructure.gov.au/roads/safety/publications/2018/pdf/second_gen_approach_roadside_drug_testing.pdf
4. Davey, J., Armstrong, K. Freeman, J., Sheldrake, M. (2017) Roadside drug testing scoping study: Final report for the Department of Infrastructure, Regional Development and Cities. (Canberra ACT)
5. Armstrong, K., Watling, C., & Davey, J. (2018). Deterrence of Drug Driving: The impact of the ACT Drug Driving legislation and detection techniques. *Transportation Research Part F* 54 (2018) 138–147
6. Victorian Law Reform, Road and Community Safety Committee 'Inquiry into drug law reform' (2018)
7. Brands et al. (2019) *Acute and residual effects of smoked cannabis: Impact on driving speed and lateral control, heart rate, and self-reported drug effects* *Drug and Alcohol Dependence* 205
8. <https://www.abc.net.au/news/2019-07-24/drug-driving-advice-cruel-underestimation-magistrate-says/11342430>
9. <https://www.adelaidenow.com.au/truecrimeaustralia/police-courts/cannabis-oil-user-brenton-peters-calls-for-drug-driving-reform-after-getting-charges-thrown-out-of-court-in-landmark-decision/news-story/f108bff83af134a489e1fb2bf536d716>
10. Dr Kate Seear, Senior Lecturer in Law, Monash University, *Transcript of evidence*, 5 June 2017, p. 176.
11. Professor Alison Ritter, Director, Drug Policy Modelling Program, National Drug and Alcohol Research Centre, *Transcript of evidence*, 19 June 2017, p. 251.
12. Arkell TR, Kevin RC, Stuart J, et al. Detection of Δ^9 THC in oral fluid following vaporized cannabis with varied cannabidiol (CBD) content: An evaluation of two point-of-collection testing devices. *Drug Test Anal.* 2019;11:1486–1497
13. Vindenes, Vigdis & Jordbru, Dag & Knapskog, Arne-Birger & Jensen, Elena & Mathisrud, Grete & Slørdal, Lars & Morland, Jorg. (2011). Impairment based legislative limits for driving under the influence of non-alcohol drugs in Norway. *Forensic science international.* 219. 1-11. 10.1016/j.forsciint.2011.11.004.
14. Asbjørg S. Christophersen, Ritva Karinen, Jørg Mørland & Hallvard Gjerde (2020) The implementation of per-se limits for driving under the influence of benzodiazepines

- and related drugs: No increased risk for arrest during therapeutic use in Norway, Traffic Injury Prevention, 21:2, 12226, DOI: [10.1080/15389588.2020.1724977](https://doi.org/10.1080/15389588.2020.1724977)
15. C. Tingvall and N Haworth. *"Vision Zero – An ethical approach to safety and mobility"* 6th ITE International Conference Road Safety and Traffic Enforcement: Beyond 2000. Melbourne, 1999.
 16. Kimpton. *"Increasing the Speed Limit on Australian Highways, Freeways and Motorways"* Aspects of road safety in Australia, Australian Parliament House Senate Standing committees on Rural and Regional Affairs and Transport. Canberra, 2015.
 17. TLIF0005 Apply a fatigue risk management system.
 18. TLIF0006 Administer a fatigue risk management system
 19. <http://www.tac.vic.gov.au/road-safety/statistics/summaries/fatigue-statistics>