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HARNESSING AI: SEATBELTS AND THE LAW IN QUEENSLAND

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In November 2021, the Queensland Government introduced the Camera Detected Offence Program ('CDOP') and began issuing infringement notices for non-compliance with seatbelt laws. Since then, more than 130,000 drivers have been issued with infringement notices. The CDOP employs a two-stage process in which Artificial Intelligence ('AI') flags images with a potential infringement for review by authorised officers. The fine is currently \$1,251 and four demerit points. This article focuses on infringement notices issued to drivers in circumstances where it is alleged that a passenger is either not wearing a seatbelt or is wearing it incorrectly. It identifies several concerning features of the infringement process: (a) the accuracy and validity (given the program's short track-record) of the CDOP for detecting offences; (b) that the accused driver must rebut a presumption that the passenger was not properly wearing a seatbelt; (c) that there is a significant financial risk in seeking to rebut that presumption; and (d) that criminal liability is imposed on a driver for the conduct of another. The article concludes by proposing law reform to improve transparency and access to justice in these infringement proceedings and argues for lengthier controlled trials to establish the accuracy of the CDOP.

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I INTRODUCTION

Since the early 1970s, wearing seatbelts has been compulsory in Australia.¹ A properly adjusted and fastened seatbelt significantly reduces the risk of serious injury or death in a traffic incident. Indeed, 'a person is nine times more likely to be killed in a collision if they are not properly restrained'.² Accordingly, in each state and territory, drivers and passengers who do not properly wear a seatbelt while a vehicle is moving, or stationary but not parked, may be punished by way of a fine and demerit points.³

In 2021, the Queensland Government became the first jurisdiction in the world to introduce camera technology to detect both mobile phone and seatbelt offences.⁴ The Camera Detected Offence Program ('CDOP'), which employs Artificial Intelligence ('AI')

¹ Jennifer Leake and Nick Barker, 'Australia was a world leader in road safety, but has progress stalled?', *ABC News* (online, 4 October 2023) <<https://www.abc.net.au/news/2023-10-04/road-safety-history-australia-toll-increase/102903364>>; 'Did You Know?', *Institute of Automotive Mechanical Engineers* (Web Page, 22 November 2022) <<https://www.iame.com.au/did-you-knowfd5b1ea0>>.

² Explanatory Note, *Transport Legislation (Distracted Driver and Other Matters) Amendment Regulation 2021* (Qld) 4.

³ Note there are some exceptions to this, for example, when reversing.

⁴ Joshua Dowling, 'Queensland Mobile Phone and Seatbelt Detection Cameras Start Today', *Drive* (online, 26 July 2021) <<https://www.drive.com.au/news/queensland-mobile-phone-and-seatbelt-detection-cameras-start-today>>.

to detect potential offences, began issuing infringement notices to drivers for seatbelt-related offences in November 2021.⁵ Since then, more than 130,000 infringements have been issued in Queensland, with potential fines of more than \$145 million.⁶ Concerningly, many drivers who receive seatbelt infringements in Queensland are challenging the accuracy of the CDOP, largely because of the poor quality of many of the images produced by the AI-based detection system,⁷ and the drivers cannot recall either themselves or their passengers not wearing a seatbelt. With a 50-year history of seatbelt laws in Australia, including well-known advertising campaigns, it is second nature to many people to ‘click clack front and back’.⁸ It may be the case, however, that some drivers and passengers are uncertain about what constitutes a ‘properly adjusted and fastened’ lap-and-sash seatbelt.⁹

In some states, including Queensland and Victoria, there is an express legal presumption that the camera detection systems used were, at the relevant time, operating correctly.¹⁰ While governments justify the use of these systems by pointing to road safety benefits,¹¹ recent criticisms of the accuracy of AI-based detection systems,¹² and the poor quality of some photographs relied on as proof of an offence, are concerning. While many

⁵ 'Mobile Phone and Seatbelt Detection Cameras', *Transport Accident Commission (Vic)* (Web Page, 26 February 2025) <<https://www.tac.vic.gov.au/road-safety/staying-safe/mobile-phone-and-seatbelt-detection-cameras>>; 'Fines and Camera Detected Offences', *Queensland Government* (Web Page, 26 February 2025) <<https://www.qld.gov.au/transport/safety/fines/cameras>>; 'AI-Driven Technology for Road Safety', *BBC News* (Web Page, 26 February 2025) <<https://www.bbc.com/news/articles/ce8dpvxexz8o>>.

⁶ Personal correspondence from Chief Engineer, Queensland Department of Transport and Main Roads, 6 August 2024; Personal correspondence from Chief Engineer, Queensland Department of Transport and Main Roads, 16 July 2025.

⁷ 'AI Seatbelt Camera Wrongly Fined 1,842 Drivers', *Australian Computer Society* (Web Page, 14 September 2023) <<https://ia.acs.org.au/article/2023/ai-seatbelt-camera-wrongly-fined-1-842-drivers.html>>; Gary Moorhead, 'Monday Mornings in Court Seven', *Pearls and Irritations Public Policy Journal* (Web Page, 26 October 2024) <<https://johnmenadue.com/monday-mornings-in-court-seven/>>.

⁸ RTA ROADS & TRAFFIC AUTHORITY, 'CLICK CLACK FRONT 'N' BACK (AUSTRALIAN AD, 1990)' (YOUTUBE, 2008) <<https://www.youtube.com/watch?v=xKgMvWgpN8U>>.

⁹ *Australian Road Rules Amendments 2023* (Parliamentary Counsel's Committee, 5 May 2023) 15–16. Examples of properly fastened belts provided included the lap portion of the belt sitting low and firmly over the driver's hips, and the sash portion positioned firmly over the driver's shoulder and not under the driver's arm.

¹⁰ See *Transport Operations (Road Use Management) Act 1995* (Qld) s 120 noting the requirements of testing and certification for example *Traffic Regulation 1962* (Qld) s 210EA; *Road Safety Act 1986* (Vic) s 80D, *Road Transport Act 2013* (NSW) ss 139A, 140, 141.

¹¹ Explanatory Note (n 2).

¹² Gary Moorhead, 'Trust Governments with AI? Perhaps Not, When There Is a Revenue Stream Involved', *Pearls and Irritations Public Policy Journal* (Web Page, 2 February 2024) <<https://johnmenadue.com/post/2024/02/trust-governments-with-ai-perhaps-not-when-there-is-a-revenue-stream-involved/>>.

photographs are of such poor quality it is hard to see much detail at all, the Government claims that the AI built into the system can detect non-compliance.

Notably, in all Australian states and territories, a driver may be issued an infringement notice where a passenger fails to properly wear a seatbelt. Indeed, in Queensland between 2022 and 2023, most seatbelt infringements (63 per cent)¹³ issued to drivers were for passenger non-compliance. This article is primarily concerned with that phenomenon: the issue of an infringement notice to a driver in Queensland where a passenger is alleged not to have properly worn a seatbelt. In addition, in all Australian states and territories, infringement notices are directed to the registered vehicle owners for both driver and passenger seatbelt offences.

The purpose of this article is to examine the legitimacy, in Queensland, of issuing infringement notices to drivers for allegedly failing to ensure that a passenger was correctly wearing their seatbelt. It first considers the process of capturing and reviewing seatbelt offences, in particular the use of AI and the challenges posed by new technology. It then canvasses the relevant legislation and the processes by which a driver can dispute an infringement. It also considers the defences on which a driver may rely and contrasts the Australian position with the legal framework in Canada, including the availability of a complete defence of due diligence. Finally, it makes recommendations to address these challenges, including law reform and improved education and awareness in Queensland concerning seatbelt laws.

II LIGHTS, CAMERA, ACTION: THE TECHNICAL WORLD OF SEATBELT INFRINGEMENTS

Given the magnitude of the fine, which can cause considerable economic hardship and personal distress, it may be assumed that devices used to detect offences are accurate. By way of an analogy, speed cameras are regularly calibrated and are typically accurate to within ± 1 km/h up to 100 km/h and $\pm 1\%$ at speeds over 100km/h.¹⁴ In-field validation is carried out against vehicles travelling at known speeds, and calibration certificates are available for every camera.

¹³ Personal correspondence, 6 August 2024 (n 66).

¹⁴ Queensland Police Service Calibration Laboratory, *Photographic Detection Device* (Calibration Report No 0595, 13 February 2019).

There is no equivalent requirement that calibration or validation evidence be produced in relation to seatbelt infringements.¹⁵ This is because the seatbelt detection systems employ a two-stage process involving: (a) image capturing and AI-based flagging of potential infringements; and (b) human review and adjudication.¹⁶ Currently, there is limited publicly available information relating to the accuracy, validity or reliability of either stage. This article therefore considers each stage in turn.

A Stage One: Image Capturing and AI-based Flagging of Potential Infringements

Mobile phone and seatbelt infringement images must be captured using very short exposure times to avoid blur in images of moving vehicles. This means that there may be insufficient ambient light for 'regular' photographs, especially at night. The CDOP cameras used in Queensland overcome this limitation by using an infrared ('IR') illumination system and a camera with an IR filter. Infrared rays highlight the vehicle, and the end-product is a greyscale image of objects in the frame which have different reflectivity. Importantly, objects that are darker in visible light may appear to be very bright in IR, though this depends on the texture and reflectivity of the material. Although visible wavelengths are claimed to have no impact on the images, components of sunlight may add to the overall illumination and cause 'white-out' in many images.

By law, three images are taken of each vehicle.¹⁷ The first captures the vehicle's number plate using a short exposure time. The second, taken with longer exposure at a shallow angle, is designed to capture the driver's upper body and head. The third is taken at a steeper angle to capture the driver's lap.¹⁸ This is presumably because the system was initially designed to detect mobile phone use by the driver. Depending on illumination conditions and camera angles, passenger details may also be captured, but often with very different acuity.

¹⁵ Note, however, there are some exceptions such as the installation, reinstallation, replacement or repair of the camera system hardware, or change to the computer software used by the system, in which case, the system must be tested in accordance with the specifications of the system's manufacturer to ensure the system operates correctly. See *Traffic Regulation 1962* (Qld) r 210EA.

¹⁶ 'Mobile Phone and Seatbelt Cameras', Queensland Government (Web Page, 30 September 2024) <<https://www.qld.gov.au/transport/safety/fines/cameras>>.

¹⁷ See *Traffic Regulation 1962* (Qld) r 210EA.

¹⁸ 'Mobile Phone and Seatbelt Detection Cameras', Victorian Government (Web Page, 16 February 2024) <<https://www.vic.gov.au/mobile-phone-and-seatbelt-detection-cameras>>.

B Accuracy of the Initial (AI-based) Infringement Detection

Researchers in other countries, including China, Malaysia, Turkey and Iran, have reported average seatbelt-detection accuracy rates, using camera systems similar to those used in Queensland, ranging from 91.9¹⁹ to 98.9 per cent,²⁰ and an average false infringement rate of 6.4 per cent.²¹ These studies generally used large banks of 2,000-5,000 images to train AI models and validate camera performance. Those estimates necessarily depend on the clarity of the images used to train deep-learning detection models.

The company that developed the CDOP used in Queensland (and deployed in other Australian jurisdictions and overseas) is Acusensus, which claims its technology can 'generate high-quality images as evidence for enforcement and prosecution purposes'.²² However, this is no publicly available data on the 'accuracy' or 'validity' of the Acusensus systems in terms of estimated rates of false positives (detecting a violation when none exists) and false negatives (not detecting a violation when there is one).

In contrast with Acusensus' claims that their system produces 'high resolution, prosecutable evidence',²³ there are hundreds of examples of extremely poor-quality seatbelt infringement images on social media. A review of these images suggests that image quality is frequently better on the driver's side of the vehicle. On the passenger side, there are often areas of bright light or over-exposure, and some objects in those parts of the image (including seatbelts) may reflect more light than the maximum capabilities of the imaging sensor, and cannot be seen at all. This problem of over-exposure has been recognised by overseas researchers, who report that detection systems do not perform well for light coloured vehicles in bright light conditions.²⁴ This problem is also mentioned by Turkish researchers, who excluded images taken between

¹⁹ Alperen Elihos et al, 'Comparison of Image Classification and Object Detection for Passenger Seat Belt Violation Detection Using NIR & RGB Surveillance Camera Images', in *2018 15th IEEE International Conference on Advanced Video and Signal Based Surveillance (AVSS)* (Conference Proceedings, 27 November 2018) 1–6, 6.

²⁰ Sara Hosseini and Abdolhossein Fathi, 'Automatic Detection of Vehicle Occupancy and Driver's Seat Belt Status Using Deep Learning' (2023) 17(2) *Signal, Image and Video Processing* 491, 497–498.

²¹ Yanxiang Chen et al, 'Accurate Seat Belt Detection in Road Surveillance Images Based on CNN and SVM' (2018) 274 *Neurocomputing* 80, 84–85.

²² 'Acusensus Limited – Initial Public Offering', *Maddocks* (Web Page, 23 December 2022) <<https://www.maddocks.com.au/insights/acusensus-limited-initial-public-offering>>.

²³ 'Heads-Up Enforcement Solution', *Acusensus* (Web Page, 2022) <<https://www.acusensus.com/solutions/heads-up/>>.

²⁴ Chen (n 2121) 81.

1200 and 1500 hours from their validation study because of sunlight reflection problems.²⁵ It is, therefore, not surprising that so many of the Queensland infringement images posted on social media are overexposed, making it difficult to see if a seatbelt is being properly worn. While Acusensus claims its system captures high-quality photographs '24/7 in all-weather conditions', including against a rising or setting sun,²⁶ images published in the media do not appear to support this assertion.

C Stage Two: The Human Review/Adjudication Process

Images flagged by the AI-based system as potential infringements are referred to Acusensus-trained human verifiers for review, applying a set of *unpublished* 'business rules'.²⁷ Because the IR camera system relies on edge detection and the presence of parallel straight lines to indicate that the seatbelt crosses from the shoulder to the opposite hip, it may be assumed that these characteristics are used to determine whether the seatbelt is being worn correctly.

However, when photographs are reviewed, there are difficulties in seeing those edges where clothing and seatbelts are similar in colour, texture and material (and therefore have similar reflectivity), and where the belt is partly obscured by objects such as hands, hair or clothing.²⁸ A scarf or hijab may completely cover the seatbelt. Clothing with similar reflective properties to the belt, and disruptive materials such as 'furry' seatbelt covers, may also cause confusion for the AI detection system and human verifiers.

Based on examples published on the Department of Transport and Main Roads ('TMR') website, there may also be an assumption that the belt should be crossing the body in a straight line at an angle of 45 degrees.²⁹ That 45-degree alignment is, however, only likely if the seatbelt anchor is situated above the level of the shoulder and the chest is completely flat. It is therefore possible that images of people of short stature (including

²⁵ Elihos et al (n 1919).

²⁶ Acusensus (n 2223).

²⁷ Information Integrity Solutions Partners, *Privacy Impact Assessment Report and Independent Review – Mobile Phone and Seatbelt Technology (MPST)* (Final Report by The Department of Transport and Main Roads, 14 February 2022) 9; Moorhead (n 7).

²⁸ Warusia Yassin et al, 'Seatbelt Detection in Traffic System Using an Improved YOLOV5' (2023) 5(2) *Journal of Advanced Computing Technology and Application (JACTA)* 1–16, 7.

²⁹ 'Seatbelt Exemption Certificates – Fact Sheet', *Queensland Department of Transport and Main Roads* (Web Page, 1 November 2024) <https://www.support.transport.qld.gov.au/qt/formsdat.nsf/forms/QF2690/%24file/F2690_CFD.pdf>.

children) and some women may be incorrectly flagged because of variation in the position of the seatbelt. The trajectory of the belt is almost certain to vary in women with larger breasts, who may adjust its position to avoid breast pain or chafing on the neck. The trajectory is also likely to be altered in women who are pregnant and in people who are overweight or obese. Moreover, changes in parallax and lighting may cause the belt to 'disappear' as it crosses the torso. It is not known whether or how the requirement that a seatbelt be 'properly adjusted' means that it is adjusted in a manner appropriate to the size shape and physical condition of the person wearing it,³⁰ is considered during the review process.

Human verifiers face further challenges because, in many cases, belt edges cannot be seen at all due to lighting or over-exposure, or because the belt is hidden by clothing, hair or objects on the passenger's lap (which may also not be clearly seen in the image). Moreover, the area between the passenger's left shoulder and the seatbelt anchor point cannot be seen at all in many images because of the camera angle, shadows, illumination problems, reflectivity, or lack of focus behind the passenger. The bottom line is that if the human verifier cannot see the belt going over the shoulder, it is deemed to be under the arm, even if it cannot be seen there either, and an infringement notice is issued to the driver. In Queensland, most seatbelt infringements (nearly 75%) are for incorrect wear rather than a complete failure to wear one.³¹ It follows that most contested seatbelt infringements are also likely to concern allegations of incorrect wear.

While fine revenue from the CDOP in Queensland is significant,³² there has been no modelling of the program's personal, social, and economic impact on alleged offenders. In the absence of calibration or validation studies concerning the system's accuracy in Queensland, it is not possible to estimate the proportion of infringement notices that are issued in error. Both TMR and Acusensus claim very high levels of accuracy and integrity, yet there is no publicly available data from 'ground truth validity studies' to support this. Despite claims of confidence in validity, in the Acusensus 2023 Annual Report, Managing

³⁰ *Maroney v Wojcicka* [2003] ACTCA15 [28].

³¹ Mark Bailey, 'Seatbelts and Child Restraints on Properly or \$1,161 Fine' (Ministerial Media Statement, 21 August 2023) <<https://statements.qld.gov.au/statements/98495>>.

³² 'Speeding Fines', *Queensland Parliament* (Web Page, 14 December 2023) <<https://www.parliament.qld.gov.au/Work-of-the-Assembly/Petitions/Petition-Details?id=4007>>.

Director Alexander Jannink writes that ‘improvement of the image quality and AI recognition accuracy for our ‘Heads-Up’ solution will continue to be a focus.’³³

III SEATBELTS AND THE LAW IN QUEENSLAND

From a national perspective, each Australian state and territory is responsible for its own road safety laws, but these are guided by model laws known as the Australian Road Rules.³⁴ While not strictly legislation, Australian Road Rules r 265(3) provides that:

The driver of a motor vehicle (except a bus or taxi) that is moving, or that is stationary but not parked, must ensure that each passenger in or on the vehicle who is 16 years old or older complies with subrule (2), unless the passenger is exempt from wearing a seatbelt under rule 267.

Similar versions of this guiding rule can be seen in every state and territory. Relatedly, each state and territory has separate offences for a driver being responsible for a passenger over 16 properly wearing an approved seatbelt, and a passenger under 16.

It is difficult to classify the offence type relating to the Queensland provision, r 264A of the *Transport Operations (Road Use Management—Road Rules) Regulation 2009* (Qld). While it is accepted that this is a criminal (simple) offence, arguably the requirement that a driver ensure a passenger is properly wearing an approved seatbelt (while the vehicle is moving or stationary) could be considered one of absolute liability. This is because it is an offence for which the prosecution does not have to prove intent or knowledge, only that the accused failed to perform the act of ensuring their passenger was properly wearing a seatbelt.³⁵ It has been noted by the Supreme Court of New South Wales that:

Where an offence is one of absolute liability, the prosecution does not need to establish that the defendant knew that his act was wrongful, and it will succeed even where the defendant had no such knowledge. Where the offence is one of strict liability, and where an issue arises on the evidence as to whether the defendant was honestly and reasonably mistaken as to the existence of those facts which (if true)

³³ Acusensus Limited, *Annual Report 2023* (Report, 2023) 1–105, 7.

³⁴ Australian Road Rules (as at 9 June 2023, Parliamentary Counsel’s Committee, as approved by the Infrastructure and Transport Ministers’ Meeting).

³⁵ Mirko Bagaric, *Ross on Crime* (Thomson Reuters, 9th ed, 2021) 1461.

would have made his act innocent, the prosecution will succeed only where it established that such was not the defendant's state of mind.³⁶

Leaving aside, for the moment, the potential problems with using AI in detection systems and erroneous infringements being issued, even if a passenger is not correctly wearing a seatbelt, the defence of mistake of fact (at least at common law), and a similar defence of 'due diligence' ought to be available to a charge contrary to r 264A. Admittedly, making these defences available would require some legal surgery.

Noting that there is a uniform requirement across Australia that conduct attracting criminal liability must be voluntary,³⁷ this requirement seems at odds with the criminalisation of a driver's failure to monitor the behaviour of another adult. There may be many reasons why a passenger may not be properly wearing their seatbelt (other than lawful exemptions). A passenger may alter the alignment of a seatbelt because they are uncomfortable, momentarily reaching to get something from a bag at their feet or in the glove box, or turn to attend to an infant in the back seat. Notwithstanding criminal law relating to secondary liability, it is seldom the case that governments criminalise the failure or omission of a person to control the behaviour of another. As observed elsewhere:

... even if omissions are covered by the language of the offence provision, they are subject to further regulation by the general criminal law ... because they are a type of conduct, they are subject to the same requirements as acts: the prosecution must prove that the omission was voluntary and (in the federal and common law jurisdictions) intentional (subject to contrary statutory interpretation).³⁸

³⁶ *Holloway v Gilport Pty Ltd* (1995) 79 A Crim R 76, 79 (Hunt CJ).

³⁷ Jeremy Gans, *Modern Criminal Law of Australia* (Cambridge University Press, 2nd ed, 2016) 102; *He Kaw The v R* [1985] HCA 43; (1985) 157 CLR 523, 570 (Brennan J).

³⁸ Gans (n 3737) 104.

Table 1: Criminal liability in Australia for a driver whose passenger fails to properly wear a seatbelt

	Can a driver be fined for an adult passenger not properly wearing seatbelt?	Rebuttable presumption that the camera detection system is accurate?	AI used in camera detection?	Maximum Penalties (non-public holiday, passenger is over 16)
ACT	Yes See <i>Road Transport (Road Rules) Regulation 2017</i> (ACT), ss 265(3) 266(1)	No	Yes	3 demerit points \$3200 fine
NSW	Yes See <i>Road Rules 2014</i> (NSW) r 264-1	No ¹⁵⁶	Yes	3 demerit points \$2,200
NT	Yes See <i>Traffic Amendment (Australian Road Rules) Regulations 2011</i> (NT), rr 265(3) 266(1)	No	No	3 demerit points \$500 fine
QLD	Yes See <i>Transport Operations (Road Use Management—Road Rules) Regulation 2009</i> (Qld) r 264A	Yes See <i>Transport Operations (Road Use Management) Act 1995</i> (Qld) s 120	Yes	4 demerit points \$3,338 fine
SA	Yes See <i>Australian Road Rules under Road Traffic Act 1961</i> (SA), rr 265(3) 266(1)	No	Yes	3 demerit points \$448 fine
TAS	Yes See <i>Road Rules 2019</i> (Tas) rr 265(3), 266(1)	No	Yes	3 demerit points \$410 fine
VIC	Yes See <i>Road Safety Road Rules 2017</i> (Vic) r 264A	Yes See <i>Road Safety Act 1986</i> (Vic) ss 66 and 80C	Yes	3 demerit points \$407 fine
WA	Yes <i>Road Traffic Act 1974 - Road Traffic Code 2000</i> (WA) ss 233(3), 234(1)	No	Yes	4 demerit points \$550 fine

Note: Fine amounts last verified 9 February 2026.

¹⁵⁶ 'Driving (Traffic) or Vehicle Registration Offences', *Local Court New South Wales* (Web Page, 31 January 2024) <<https://localcourt.nsw.gov.au/your-legal-problem-is-about/police-and-crime/driving--traffic--or-vehicle-registration-offences.html#attending0>>.

While the proper wearing of seatbelts is integral to road safety, the situation in every state and territory is that a driver may be criminally liable for the alignment of a passenger's seatbelt. One might argue that this may not meet the minimum threshold for criminal conduct,¹⁵⁷ simply on the basis that a driver ought not to be responsible for being unaware that a passenger's seatbelt is not properly worn.

A 'Ensuring' a Passenger Wears an Approved Seatbelt Properly

In 2021, the Queensland Government introduced a new law requiring drivers of vehicles that are moving, or stationary but not parked, to ensure that each passenger is wearing an approved seatbelt that is properly adjusted and fastened.¹⁵⁸ One justification for the introduction of the new law was that failure to wear a seatbelt continues to be a serious contributor to road trauma in Queensland.¹⁵⁹ As part of the explanation for the new law, it was stated that 'a driver generally has an obligation to ensure that their passengers are appropriately restrained'.¹⁶⁰ A driver's failure to ensure that a passenger is properly wearing a seatbelt while operating a vehicle may result in an infringement notice (by way of a fine and demerit points).

It is unclear *how* a driver must ensure that each passenger in the vehicle is wearing a properly adjusted and fastened seatbelt for the entire duration of a journey. The difficulty in imposing such a requirement is that, given much road use legislation is concerned with safety, the constant requirement to ensure that all passenger seatbelts are properly worn (including in the rear seats, and making sure the sash is not worn under a passenger's arm) would undeniably be a distraction. Driver distractions are discouraged by the Queensland Government, including 'attending to children in the backseat'.¹⁶¹ An important question is whether the safety of Queensland roads is well served by legislation requiring the constant monitoring of each passenger's seatbelt alignment. It is offered that while criminal liability ought to lie with an adult passenger who does not correctly wear a seatbelt, a driver should either not be held liable for such a failure, or, at least, the law be amended so as not to require constant monitoring of proper wear. One might

¹⁵⁷ Gans (n 3739) 115; *Williams v R* [1978] 140 CLR 591.

¹⁵⁸ *Transport Operations (Road Use Management – Road Rules) Regulation 2009* (Qld) r 264A.

¹⁵⁹ Explanatory Note (n 22).

¹⁶⁰ *Ibid.*

¹⁶¹ 'Driver Distractions', *Queensland Government* (Web Page, 7 September 2022)

<<https://www.qld.gov.au/transport/safety/road-safety/driving-safely/driver-distractions>>.

accept that, while a driver may generally be responsible for a passenger's safety (including the wearing of a passenger's seatbelt), that responsibility is discharged by exercising due diligence at the commencement of the journey.

B The Adjudication Process

In Queensland, fine recipients are offered three options: pay the fine; complete a form to declare they were not driving at the time (and nominate the driver); or elect to have the matter dealt with by a court.¹⁶² A fourth option—to complete an on-line form to request a review—is available but is not shown on seatbelt infringement notices (it is only stated on speeding tickets).

Those who request a review may receive a response from an adjudications officer in the Queensland Revenue Office that the notice was correctly issued and will not be withdrawn. The options are then to pay the fine or elect to go to court.¹⁶³ Choosing the court route means appearing at a Magistrates Court (which may be hundreds of kilometers from home) to register a plea at a mention and obtain a hearing date, which is likely to be months later. These two court appearances may incur considerable costs, which disproportionately affect people who live a considerable distance from permanent courts or, indeed, interstate. Some fine recipients will seek assistance from a legal representative, but even without representation, there may be costs associated with time off work, childcare, travel and, in some cases, accommodation, not to mention the emotional stress of appearing in court. Anticipated anxiety and distress may dissuade even the most certain of petitioners from this route. It is unsurprising, then, that some recipients elect to pay up after this initial review, even those who are uncertain of their guilt.

C Rebuttable Presumption

For camera-detected offences, there is a presumption that the cameras are operating correctly.¹⁶⁴ In terms of capturing the requisite three images (a number plate, and a

¹⁶² 'Infringements', *Queensland Police Service* (Web Page, 8 May 2024) <<https://www.police.qld.gov.au/initiatives/road-safety/infringements>>.

¹⁶³ 'Dispute a Fine in Court', *Queensland Government* (Web Page, 9 May 2024) <<https://www.qld.gov.au/transport/safety/fines/contest>>.

¹⁶⁴ See *Transport Operations (Road Use Management) Act 1995* (Qld) s 120; *Road Safety Act 1986* (Vic) ss 66, 80C. See also *Transport Operations (Road Use Management) Act 1995* (Qld) s 120D, a rebuttable presumption for photographic or video evidence relating to approved seatbelts.

deep and shallow angle image), this presumption is almost always met, but there is no requirement about the *quality* of the images produced.

Those who progress to the mention stage before a magistrate will be asked if they wish to challenge the 'accuracy of the camera' or the 'image from the camera' and are asked to complete an 'Intention to Challenge or Dispute' form. This allows the prosecutors to bring expert engineers from the company that developed and operate the camera-based infringement system (Acusensus) to appear in court to attest the 'accuracy' of the photographic detection device and the images. The cost of bringing Acusensus engineers to Queensland from Melbourne can be anywhere from \$8,000 to \$12,000.¹⁶⁵ Plausibly, accused persons who are advised that they could be liable for these costs if the prosecution case is successful may change their plea to guilty. Even without legal costs (which can be thousands of dollars), the prospect of a \$1,200 fine, additional court and State Penalties Enforcement Registry ('SPER') costs, and expert witness costs may cause an accused person to plead guilty. In rare cases, a guilty plea, with a convincing appeal for extenuating circumstances, and a good driving record, might be enough to persuade a sympathetic magistrate to reduce the fine, but the plea of guilty stands.¹⁶⁶ The challenges of navigating this system mean that many alleged offenders may feel that they have little chance of success in proving their innocence, and either pay immediately or commence a challenge and then pay. The very high proportion of cases that are recorded as 'guilty' provides justification for the TMR to continue to espouse the 'accuracy' of the CDOP. As one Southport magistrate recently stated, the devices are calibrated and in working order, and the presumption at law is that the photograph is evidence of a seatbelt being worn.¹⁶⁷

D Defences

In Australia, there is a common law defence of 'mistake of fact'.¹⁶⁸ An accused is entitled to be acquitted if they reasonably believed in a fact which made their conduct lawful (for example, a person believed they were being attacked and so used force in self-defence). It remains to be seen whether this common law defence could be used by a driver faced

¹⁶⁵ Moorhead (n 127).

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ See *Proudman v Dayman* (1941) 67 CLR 536, 540; *Thomas v R* (1937) 59 CLR 279.

with a seatbelt infringement notice. Despite some authorities indicating that statutory defences in the *Criminal Code 1899* (Qld) ('Criminal Code') (such as extraordinary emergencies and mistake of fact) may be relied on for traffic offences (such as speeding),¹⁶⁹ the Criminal Code expressly excludes the statutory defences of mistake of fact, lack of will, accident, and extraordinary emergencies for regulatory offences.¹⁷⁰ Importantly, to rely on the common law defence of mistake of fact, the accused would have to show that their belief was 'positively held' —that is, the driver had turned their mind to the fact that the passenger was correctly wearing their seatbelt, and not merely assumed the passenger would 'do the right thing'.¹⁷¹ For example, a driver may have to show more than that 'the seatbelt alarm was not sounding'.

In Canada, for offences of strict liability, an accused may have a full defence of 'due diligence'.¹⁷² The High Court has not determined whether this defence is available in Australia. In *R v Sault Ste. Marie*, sitting in the Supreme Court of Canada, Dickson CJ stated that:

Offences in which there is no necessity for the prosecution to prove the existence of *mens rea*; the doing of the prohibited act *prima facie* imports the offence, leaving it open to the accused to avoid liability by proving that he took all reasonable care. This involves consideration of what a reasonable man would have done in the circumstances. The defence will be available if the accused reasonably believed in a mistaken set of facts which, if true, would render the act or omission innocent, or if he took all reasonable steps to avoid the particular event. These offences may properly be called offences of strict liability.¹⁷³

In reaching this decision, the Supreme Court took into consideration the risk of imprisonment and/or heavy fines.¹⁷⁴ We say that, in relation to Queensland's r 264A *Transport Operations (Road Use Management-Road Rules) Regulation 2009* (Qld), there ought to be an express provision allowing 'due diligence' as a complete defence. This would ensure that drivers who checked their passenger's seatbelts before departure and

¹⁶⁹ *Dart v Queensland Police Service* [2022] QDC 93; *Rowley v Commissioner of Police* [2017] QDC 88; *McNamara v Queensland Police Service* [2015] QCA 99.

¹⁷⁰ *Criminal Code 1899* (Qld) s 36(2) ('Criminal Code').

¹⁷¹ See the discussion regarding a positive belief in *McKenzie v G J Coles & Co Ltd* [1986] WAR 224.

¹⁷² *R v Sault Ste. Marie* [1978] 2 SCR 1299; Gans (n 3737) 158.

¹⁷³ [1978] 2 SCR 1299, 1325.

¹⁷⁴ *Ibid* 1314.

did not become aware of any infractions would benefit from this defence. In light of the size of the fine in Queensland, recognition of this defence may be prudent and provide fairer outcomes. It is acknowledged that some Australian jurisdictions (Australian Capital Territory and Northern Territory) have enacted a statutory due diligence defence for regulatory offences, though the burden of proof lies on the accused to establish the defence on the balance of probabilities.¹⁷⁵

As mentioned earlier, conduct attracting criminal liability must be voluntary.¹⁷⁶ In Queensland, the criminal law recognises that conduct may be excused where an event occurs by ‘accident’, or where an act occurs independently of the exercise of an accused’s will.¹⁷⁷ While these two defences (‘accident’ and ‘lack of will’) do not (according to the Criminal Code) currently apply to regulatory offences,¹⁷⁸ we suggest that legal surgery be performed to change this, particularly for offences where culpability arises in circumstances outside the control of an accused. We also note that these defences do not apply to offences of negligence. If r 264A is considered an offence relating to negligence, then the prosecution must prove beyond reasonable doubt: (a) the accused had a duty; (b) the duty was breached; and (c) the breach mounted to criminal negligence.¹⁷⁹ As such the following is premised on r 264A not being considered an offence of negligence.

Turning to the defences, then, relevantly, the Criminal Code provides:

23 Intention—motive

(1) Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for—

(a) an act or omission that occurs independently of the exercise of the person’s will;

or

(b) an event that—

(i) the person does not intend or foresee as a possible consequence; and

(ii) an ordinary person would not reasonably foresee as a possible consequence.

¹⁷⁵ Gans (n 3737) 159.

¹⁷⁶ Ibid 102; *He Kaw The v R* [1985] HCA 43; (1985) 157 CLR 523, 570 (Brennan J).

¹⁷⁷ Criminal Code (n 170) s 23(1).

¹⁷⁸ Ibid s 36(2).

¹⁷⁹ *R v Callaghan* (1952) 87 CLR 115.

While the defence of ‘accident’ (s 23(1)(b)) does not currently apply to regulatory criminal offences against the statute law of Queensland,¹⁸⁰ it is argued that a driver ought to be able to avail themselves of this defence in circumstances where they did not intend or foresee that a passenger would not properly wear their seatbelt, and an ordinary person would not reasonably foresee the improper wearing as a possible consequence.

Further, the defence colloquially referred to as ‘lack of will’ (s23(1)(a)) ought be available, because a driver should not be criminally liable for an act (for example, seatbelt removal or misalignment) that occurs independently of the exercise of the their will. While this defence is normally relied on where a person’s own actions were involuntary (for example, actions during an episode of parasomnia), we offer that the construction of the statute may equally be applied to attributing criminal liability for the conduct of another person.

Before leaving this part, there is a point (relating to construction) worthy of reflection; r 264A provides that the driver must ‘ensure’ each passenger in or on the vehicle is wearing an approved seatbelt that is properly adjusted and fastened in the way required by law. The law remains unclear as to how this obligation is discharged.

We offer that there is currently a lack of clear guidance on the availability of defences to a charge under r 264A, to the extent that magistrates are dispensing justice by reducing the fine to account for individual circumstances.¹⁸¹ This approach, however, is at odds with general principles of criminal law: reducing a penalty to reflect culpability is perfectly acceptable, but it ought not displace either the prosecution’s duty to prove its case or the availability of defences to the charge.

IV RECOMMENDATIONS AND CONCLUSION

Amidst the above, we recommend legal surgery to provide robust defences to those infringed under r 264A of the *Transport Operations (Road Use Management—Road Rules) Regulation 2009* (Qld). We also suggest that greater transparency exist as to the accuracy of the system to detect non-wear and incorrect wear in both drivers and passengers, using images obtained from vehicles travelling at speed in Australian conditions. We also

¹⁸⁰ Criminal Code (n 170) s 36(2); *Molloy v Hallam* [1903] St R Qld 282, per Griffith CJ; see also S M Ryan et al, *Carter’s Criminal Law of Queensland* (LexisNexis Butterworths, 26th ed, 2024).

¹⁸¹ Moorhead (n 12).

urge for greater clarity surrounding the business rules used by human verifiers reviewing contested infringements.

Lengthier trials of the CDOP, and publication of validity data, would doubtless foster greater public confidence. As is clear from the above, once a driver has been erroneously issued an infringement notice, there are significant barriers (both financial and emotional) to contesting guilt. This has never been, nor should ever be, a feature of the criminal justice system. As such, the reverse burden created by Queensland law ought to be repealed. Law reform is necessary to avoid imposing absolute liability on a driver, and to afford them a defence of mistake of fact and/or due diligence. Sensibly, liability for failing to wear a seatbelt ought to rest solely with the person (the passenger) who fails to do so, though that is a subject for a different article entirely. We encourage the Queensland Government to undertake a systematic review of cases that have challenged the CDOP scheme, as well as consider a stronger, evidence-based public awareness campaign to reduce road trauma by supporting 'correct' seatbelt usages.

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