



Road Trauma
Support Group
NSW

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Serious Road Crime Consultation Paper 23,

NSW Law Reform Commission

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Executive Summary

Too many people are dying as a result of serious road crime which could be avoided but which is instead rapidly increasing in New South Wales (NSW).

Laws and sentences are outdated and ineffective. Court decisions are being made based on a century-old law and even with amendments and guidance, sentencing trends are still not reflective of community expectations.

Specifically, average head sentences of approximately three years for dangerous driving occasioning death and five years for aggravated dangerous driving occasioning death are wholly inadequate, disrespectful to the value of human life, misaligned with community views and expectations.

This clearly demonstrates the need for serious reform in relation to serious road crime.

The Road Trauma Support Group NSW (RTSG) has mapped a root and branch law reform pathway and is seeking the following outcomes to be delivered promptly to avoid further avoidable loss on our roads:

- New road crimes Act
- New offence of Vehicular Homicide
- New offences and penalties hierarchy with standard non-parole periods for vehicular homicide
- Sentencing that recognises criminality associated with serious road crime and the devastating impact on families and communities
- Legislating the need to provide victim impact panels
- Embedding a better approach to victim-centered design and services

As a member of RTSG, I have been provided the opportunity to engage with the organisation's positions, and I support the recommendations provided in the RTSG submission.

I have provided a summary of the recommendations in the RTSG submission, as well as providing further details and positions on the rights and experiences of victims.

As a Mother whos world was ripped apart on Christmas Eve, due to the negligent actions of a young and inexperienced driver, I stand with the RTSG is demanding a change to the outdated laws and legislation as it is currently not fit for purpose. The offender who killed my 18 year old son was charged with Manslaughter & Skys law – spends 2 years 6 months in jail after reaching speeds of 165Km in a 40km road works zone – what type of deterrent is that for future young males in society. Outdated case law, a judge who is weak, and a Director of the DPP who refused to do anything to appeal the case, or even speak with me about it. A system that is designed to help the offender but does nothing to recognize the hurt, grief and impact that these criminal actions have on the surviving family members or the extreme process that is needed to be undertaken to try and get some sort of justice, that no matter how hard you fight, never actually comes.

Road crime needs to be recognised by the law and judiciary for what it is – a violent and unprovoked assault on the person with a deadly weapon (a motor vehicle) with potentially catastrophic consequences, often occurring in situations where the offender has a reckless disregard for other road users as demonstrated by their blatant disrespect for road rules. I look forward to the opportunity to contribute further during the law reform process.

Hearing the lived experiences from those who have and are going through this process is the best and only way that a real change can be effected.

Having the identify and bury or your child is the worst form of pain.

A wife who loses a husband is called a widow

A husband who loses a wife is called a widower

A child who loses his parents is called a orphan

There is no word for a parent who loses a child

That is how awful the loss is!

1. Introduction

I have been a member of the Road Trauma Support Group NSW (RTSG) since approx. March 2021 . Our Vision is that no one should lose their life and no family should experience the death of a loved one through the criminal act of another road user (Road Trauma Death).

Current approaches to reducing road trauma are not working and NSW citizens are paying too high a price – death of loved ones. Road trauma death numbers in New South Wales are unacceptably high with (on average) one person dying on NSW roads every day in circumstances that should be avoidable.

The penalty regime in NSW is not reflective of the destructive and detrimental consequences road crime has on victims, their families and members of the community.

NSW is in the midst of a road crime and road trauma crisis. The consequences of this are members of the community are not protected and relevantly justice is not being afforded to the most key stakeholder in this – victims.

The existing provisions dealing with serious road and dangerous driving offences and accessorial liability provisions DO NOT remain fit for purpose.

The road trauma crisis response must be centered around root and branch law reform that educates all on vehicular responsibilities, deters criminal road behaviour, rehabilitates offenders and provides justice for victims, their families and the community. And this must be done with a sense of urgency and bipartisanship so as to address this crisis and save the avoidable loss of lives on NSW roads.

2. Serious road crime offences

Recommendation 1: New Law – strong action, strong message

Urgently draft and introduce new separate Road Crimes Act as the foundation for reform, to take effect no later than 2025.

To effectively reduce death and serious injury from road crime, the full hierarchy of indictable offences and penalties relating to vehicular crimes should be clearly articulated in the one Act. This legislation should encompass a range of provisions specifically tailored to handle cases involving criminal acts on the road, accessorial accountability and recidivist driving offenders.

Road crime is no 'accident' and I request that the term is removed. New policy and legislation must set the standard by using only the word 'crash' in drafting of public policy and programs, including in legal submissions, deliberations and decisions, road traffic reports and media guidelines.

Recommendation 2a: New vehicular homicide offences

– to be incorporated into the new Road Crimes Act

A new offence of vehicular homicide should be created with maximum penalties that are aligned with the maximum penalties for homicide in the Crimes Act 1900.

Driving a vehicle, or being encouraged to drive a vehicle while drunk, drug-affected, tired or speeding is irrefutably a reckless indifference to other people's lives. While road deaths can be captured under existing law, a new offence of vehicular homicide contained within the new legislation would send a clear message that vehicular homicide is just as serious a crime as other forms of homicide.

Recommendation 2b: New hierarchy of offences for serious road crime

All road crime offences currently contained within the *Crimes Act 1900* (NSW) and the *Road Transport Act 2013* (NSW) should be reviewed to inform a new hierarchy of offences. The creation of a new instrument of law would allow for a new offence of vehicular homicide as well as a new hierarchy of offences for inclusion in the new road crimes Act, commencing with this practical and powerful first step.

There are many factors that should be considered aggravating, and the current list of factors provide too many loopholes that can result in lower sentencing. "Degree of" and "extent of" can be difficult to apply, especially when those terms do not change the outcome or finality of death and trauma. For example, exceeding the speed limit should be recognised as an aggravating factor where someone dies, because driving at 10km/hour over the limit or 45 km/hour over the limit did not change the outcome of the death.

With new serious road crime legislation as the foundation of reform, I support an evidence-based approach to drafting of all new offences, rather than trying to retrofit existing offences into the new legislation.

All road crime offences currently contained within the Crimes Act and the Road Transport Act should be reviewed to inform a new hierarchy of offences. We are particularly alarmed by drivers who continually flout traffic laws and put the lives of the public at risk. Evidence-based research commissioned by RTSG confirmed repeat offenders are six times more likely to be in a serious or fatal crash than first-time offenders. Urgent action is needed to curb repeat offending and protect the community.

Recommendation 2c: New offences for non-drivers (Accessorial liability)

– to be included in the new Road Crimes Act.

I strongly urge the need to start imposing sentences of sufficient severity to deter passengers, drivers and the broader community from engaging in conduct that in anyway encourages or simply ignores risky and dangerous behaviour that can lead to any manner of road crime.

If someone is involved in enabling a violation of the law, they can and should be held just as responsible as the primary offender.

Implementing accessorial liability for impaired driving could revolutionise road safety efforts. By emphasising accountability and fostering responsible behaviour, we can create a cultural shift where impaired driving is no longer tolerated or excused. Just as society now views violent assault as abhorrent, we can make impaired driving equally reprehensible—a social anathema that is met with swift and severe consequences.

3. Penalties

Penalties currently are not in line with the prevalence and continued course of road crime committed by individuals in the community. To protect the community and combat the increase in road crime, the consequences of road crime penalties must be felt by offenders, particularly repeat offenders.

Recent sentence outcomes have been wholly inadequate and inappropriate because maximum sentences are very rarely imposed.

Recommendation 3a: Penalties – Vehicular Homicide

- penalties to be set in parity with other crimes resulting in death

I support the creation of a new road crime Act which includes clear penalty options and standard non-parole periods. It is of utmost importance to have new sentencing guidelines that are continually improved and do not become outdated.

I support the recommendation that vehicular homicide maximum penalties mirror those of other homicide offences and include Standard Non-Parole Periods (SNPPs) for these offences.

Recommendation 3b: Penalties – licence disqualification

- period to be increased and rehabilitation programs applied

Licence disqualification periods do not reflect victim and community expectations in relation to serious road crime.

I support the recommendation of an increase in default and minimum licence disqualification periods, even more so for second and subsequent offences. Recidivists should not be able to drive on our roads.

In addition to licence disqualification periods being increased, specific rehabilitation programs designed to address recurrence of the risky driving behaviour for courts to order offenders to complete. This would help to ensure the offender is fit to regain a licence. Legal duty of care must be elevated in the licensing program.

Recommendation 3c: Penalties – mandatory alcohol interlocks

– to be enforced for all convicted drink driving offenders

Effective technology is affordable and proven effective. As a crucial step in preventing alcohol-related incidents on the roads, I advocate the inclusion in legislation of the mandatory installation of alcohol interlocks for all individuals convicted of drunk driving.

Recommendation 3d: Penalties for Repeat traffic offenders

– must be increased and use of technology, such as black boxes for repeat speeding offenders, expanded.

I support the creation of a hierarchy of penalties for ALL repeat offenders with stronger penalties as repeat offending recurs. The most serious of offenders should be facing a custodial sentence with a standard non-parole period following their second offence, as well as re-training and testing before a licence is restored to a convicted repeat offender.

4. Sentencing principles and procedures

There is a lack of consistency in sentencing for criminal road behaviour compared to other crimes resulting in death (e.g. minimal sentences, community service or suspended licence).²

Recommendation 4a: New sentencing guidelines

– that recognise that deaths and serious injuries as a result of road crime must receive sentences akin to death and serious injury in other criminal circumstances

¹ NSW Sentencing Council, *Repeat traffic offender report* (September 2020)

² Road Trauma Support Group NSW and FiftyFive5, *The unheard trauma of fatal road crimes in NSW* (April 2023)

The *R v Whyte* guideline judgment³ for dangerous driving offences is outdated and must no longer be the guide for sentencing. As part of the drafting of a new road crimes Act, we need new sentencing guidelines that are continually improved so that guideline judgments do not become outdated.

Low sentences do little to deter criminal behaviour. I support the need for the Court of Criminal Appeal reviewing serious road crime cases to correct under-sentencing.

The approach to discounting of sentencing should be reviewed. The measurement of remorse, contrition and risk of reoffending cannot be systematically achieved yet we see repeated discounting applied.

Recommendation 4b: Victim Impact Panel program

– to be mandated for repeat offenders and enshrined in legislation

Victim impact panels provide a platform for victims and their families to share the personal repercussions of the crime, fostering empathy and understanding in those responsible while also holding offenders accountable.

Victim Impact Panels could play a role in bringing to life the human consequences of risky driving behaviour and I support the call for more research to establish and evaluate the best model for utilising panels to both provide an additional outlet for victims and their families, as well as deter criminal road behaviour in NSW.

Recommendation 4c: Standard non-parole periods

– sentences for serious road crime that results in death must include a standard non-parole period.

Vehicular homicide sentences should include Standard Non-Parole Periods (SNPPs). SNPPs are needed to reflect the serious nature of road crimes, especially those that result in loss of life, and to better align with victim and community expectations.

As we witness more frequent road trauma caused by people that should never have been on our roads, there is an increased expectation that death and serious injury results in time served.

5. Jurisdictional issues

Recommendation 5: Appropriate jurisdiction of higher courts

– serious road crime offences to be heard in District or Supreme court only.

³ *R v Whyte* [2002] NSWCCA 343; 55 NSWLR 252

All serious road crime should be tried on indictment and categorised as strictly indictable. A new stand-alone Act would bring together all serious road crime offences to be heard only by District Court or Supreme Court. No serious road offences, as currently included in the *Road Transport Act 2013*, should be heard summarily in Local Court due to its sentencing limits and road crimes that result in death should not be heard in the Children's Court.

6. The experiences and rights of victims

The ripple effects of criminal behaviour on our roads are felt far and wide throughout the NSW community, and the impacts are extensive and enduring. As well as law reform described above, which should simplify the system and improve transparency and accountability, it is important to minimise the secondary trauma that bereaved families experience and to better support families as they navigate the current complex systems and processes imposed on them.

Recommendation 6: New approach to designing laws and services.

– embed a victim-centered design approach to new laws and services and include road crime in the Charter of Victims' Rights.

Victim rights and support services must be improved and expanded. We need to start anew to engage and consult victims and stakeholders on development of a nation-leading policy to address the road trauma crisis and to completely shift the current paradigm and cultural support of road user privilege and provide a framework for reform that shifts mindsets and deals with road death and injury as seriously as other heinous crimes.

I support the implementation of victim-centered support systems, including access to counselling services, legal and financial assistance, and community resources tailored to meet the unique needs of those affected by road trauma. As more and more NSW families and friends are left to navigate a complex justice system, expanded resources are needed and needed urgently. This includes outreach to regional NSW where support services in remote locations are hard to access.

Road crime needs to be included in the current Charter of Victims' rights or that a stand-alone Charter of Victims' Rights for Road Crime must be established, and the scope of the Victim Support Service needs to be broadened to include victims of serious road crime so that they are able to receive mental health support and financial support immediately after the collision.

Good policy starts with the community in mind, embeds victim experience and applies learning from other policy shift success stories.

This is my experience.

December 2020, in the midst of Covid restrictions I was woken during the night with a telephone call to say, my son had been in a car crash and he was DEAD! What followed was Christmas DAY spent with Detectives trying to piece together how my son was killed, the morgue being closed and not being able to identify him for 5 long days, 5 days of pure torment, 5 days of hoping that they were wrong, that it was a mistake, that his lifeless body was not laying cold in a morgue, 5 days of hoping that they got it wrong, that it was all a nightmare, not being able to hold his funeral until the 4th January, again during a time of covid restrictions and uncertainty.

The offender released on Bail 9 days later, to the safety and security of his parents... something we will never ever get again.

From January 2021 through to December 2022 we waited, and waited for the offender to submit a plea to the charge of Manslaughter, there was upwards of 15 court appearances, mentions and the sacking of lawyers multiple times to delay the process and add further pain and anguish to me and my family. Super call over and the offender pleads guilty to Manslaughter, a sentence date is determined and we are thinking this is almost over, we will see justice and this boy will receive the appropriate punishment for the crimes that he committed. Little did we know how wrong this was to be, how much more pain and suffering we would go through before a judge finally made his determination. It took over 949 days for the offender to face his judgment, I can not put into words what this process has done to my family and my surviving son, who not only lost his big brother, but he lost his best friend, the ying to his yang. Their birthdays are 1 day apart, so he not only lost the joy of Christmas, but he also lost the only other day that meant anything to him, celebrating his birthday with his brother.

Sitting in a court room, which was something I had never had to do before, thinking I was going to hear about the loss of my son, and all of the wonderful things that he had contributed to society and was going to continue to do (teacher), only to hear a young man sit there and tell blatant lies about his relationship with my son & how those 10 days he spent in jail affected him, with no real regard or remorse for what he had done was the most heart breaking heart wrenching things besides identifying him in a morgue.

The "justice" system is broken and let my family down, not only was this process incredibly drawn out, but there was no support offered to my family, no direction on who to help, where to go, what to do. And a judge who is not held to account for the determination he set down. Manslaughter – 25 years maximum sentence – only to hand down a 5 year sentence with 2.5 years non parole. This driver was speeding more than 100km over the legal limit, he was a Red P Plater, who had been cautioned by police for speeding in the weeks leading up to this Pursuit.

The system failed my family and it failed my son, it continues to fail my family. The CTP Process, the Legal process, the whole process, is a disgrace. There is no consistency, there is too much room for interpretation. At the end of the day, no matter how and no matter which way it happened, my son was Killed.... His life was taken, gone... in an instant and there is no punishment that will ever bring him back, however there needs to be consistency in how judgments are handed down. An offender who is _____ should not be given a higher sentence for a lesser crime due to the development of his frontal lobe, manslaughter or vehicular homicide is murder with a different name, and should be treated as such.

Instant access to Victim services for counselling should be immediate, begging and pleading for help is something that myself and other families in my situation should never have to do. We ARE VICTIMS OF CRIME and should be recognized as such irrespective of whether there is "insurance" attached to how the crime was committed. Having access to these services immediately after that fact would help with the process, especially when there are other family members and children affected. Having the Girlfriends / boyfriends of the victims be recognized and able to receive support is also imperative in helping their healing journey.

Token laws Like "Skyles Law" need to actually have a minimum sentence attached to it, there needs to be minimum benchmark and deterrents plus consistency across the judicial system. Currently you be before one judge in Sydney and get 1 ruling and be Infront of a different judge in Newcastle for the same crime and get something totally different. The system failed me & it continues to fail me and my family, we need to stand up and make a change to help the families who come after us. We need to make a change, we need to stop this carnage on our roads and hold people accountable for their actions. The ripple affect that this not only has on the victims mentally but the medical networks & insurance policy makers is in the Multi millions of dollars. You have the ability to make change, be the person that is remembered for doing good, you do not ever want to be standing in the position as a member of the RTSG.

7. Road fatality reporting

Recommendation 7: Road fatality reporting of all road deaths in NSW drawing from safety practices in workplaces and aviation, to enhance investigations, promote transparency, and inform road safety measures while safeguarding individual privacy.

Reporting on all Fatal Road incidents in NSW is needed urgently to inform road safety policy and law reform. Drawing inspiration from proven safety practices in workplaces and aviation, the RTSG proposes NSW introduces fully transparent and nationally shared public reporting of road deaths.