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Submission to

**Serious Road Crime Consultation Paper 23,
NSW Law Reform Commission**

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Why, What and How?

The absence of proper reporting highlights a glaring opportunity to identify contributing factors and accessorial liability for road crime. Imagine the change in policy moving through to changed behaviour if road crashes that result in the death of a person are subject to a “Safety Investigations Report,” and these matters are made public and shared between states in Australia. This would be like workplace or aviation-related deaths, where people can learn and are forced to act.

A broader picture.

The escalating toll of fatalities resulting from serious road crimes in New South Wales (NSW) demands urgent action. Our current laws and sentencing practices are outdated and ineffective in addressing this crisis. This situation is not unique to NSW in Australia.

Courts continue to operate under century-old laws, and despite some amendments and guidance, sentencing trends remain out of touch with community standards and modern society. The average head sentences of around three years for dangerous driving occasioning death and five years for aggravated dangerous driving occasioning death are shockingly inadequate. They disrespect the value of human life and fail to align with the proportionality of the crime.

As society evolves and values undergo transformation, there is a growing demand for stringent justice measures and effective rehabilitation programs to alleviate prison overcrowding. However, existing road crime laws are antiquated and fail to align with the contemporary standards for ensuring justice within our community.

This glaring disparity underscores the pressing need for substantial reform in tackling serious road crime. Decisive action is required to prevent further loss of life and ensure that justice is indeed served.

Failure to act decisively will lead to more unnecessary deaths. I earnestly implore a thorough reevaluation of legislative frameworks concerning road crimes through the lens of contemporary societal attitudes. Both the law and the judiciary must unequivocally acknowledge road crime as what it truly is: a violent and unwarranted assault on individuals using a deadly weapon, namely a motor vehicle. The potential consequences of such actions are catastrophic, resulting from the offenders' reckless disregard for road rules and the safety of others.

Similar to recent shifts in addressing other forms of crime, such as domestic violence, revenge porn, and one-punch assaults leading to death, instigating meaningful change in tackling road crime necessitates significant shifts in attitudes among lawmakers, law enforcers, and the

judiciary. Concurrently, a concerted effort must foster behaviour change within the broader community so that road crime is seen as a social anathema and unacceptable.

Given the gravity of the current situation, there is an urgent need for a formal, bipartisan crisis response that centres on comprehensive law reform. This reform must address every aspect of the issue from its core, paving the way for effective initiatives to deter criminal behaviour, rehabilitate offenders, educate road users, and ensure justice for victims and the community.

Social Intolerance for Dangerous Driving.

Through legislation and advocacy, we need to cultivate social intolerance in the community's unwillingness to accept or condone behaviours on the road that pose a threat to public safety. This includes actions such as driving under the influence of alcohol or drugs, speeding, reckless driving, distracted driving (such as texting while driving), and other forms of irresponsible behaviour behind the wheel.

A systemic change in thinking is needed over the long term. Peer-to-peer 'grass roots' campaigns and initiatives to raise awareness about the consequences of reckless driving and encourage safer behaviours on the road can be effective. In this regard, campaigns and education must 'meet people where they are' and be tailored to specific high-risk groups, such as young males.

Social intolerance towards dangerous driving plays a crucial role in shaping societal attitudes and behaviours, improving road safety and reducing serious injuries and fatalities. This approach must be underpinned in a new Road Crimes Act.

Summary of 10 Recommendations.

These ten foundational recommendations are not just pathways to change; they embody my resolve to revolutionise road safety. Rooted in personal tragedy and fueled by the inadequacies of current laws, they stand as beacons of hope for a safer future—practical and radical common sense.

The proposed "Road Crimes Act" emerges as a singular lighthouse for legislation, a bold step towards unifying our legal framework to combat the scourge of dangerous driving. Within its scope lie crucial provisions, including establishing new offences such as Vehicular Homicide, a testament to a commitment to justice, alongside a call for stringent penalties, focusing on deterrence, rehabilitation, and accountability.

From sentencing principles to jurisdictional clarity, each recommendation bears the weight of lived experience, guided by the principle of victim-centred design and a steadfast dedication to enhancing road safety for all. All are founded on evidence. My recommendations reflect my unwavering pursuit of a safer tomorrow so no one has to experience what my family has and continues to endure.

1. New Law. "Road Crimes Act" Singular Legislation.

2. New Road Crime Offences. (2a: A New Vehicular Homicide Offence; 2b: Introduce new offences for serious road crime; 2c: Accessorial liability.)

3. Penalties for Road Crime. (3a: Penalties – Vehicular Homicide; 3b: Penalties – Effective deterrents, disqualification, the Compulsory Driver Rehabilitation Program (CDRP); 3c: Penalties - mandatory alcohol interlocks to be enforced for all convicted drunk driving offenders; 3d: Penalties for Repeat traffic offenders.)

4. Sentencing Principles and Procedures. (4a: New sentencing guideline framework; 4b: Victim Impact Panel programs; 4c: Standard non-parole periods (SNPPs).

5. Jurisdictional Solutions. Appropriate jurisdiction of higher courts.

6. New approach to designing laws and Victim-Centred Services.

7. Australian Road Fatality Reporting (ARFR).

8. Expansion of NSW Compulsory Third Party Insurance program to assist community road safety.

9. Dangerous Drivers Register (DDR).

10. Compulsory Driver Rehabilitation Program (CDRP).

When we found out the driver's name ([REDACTED]), another parent forwarded to me vile misogynistic and racist social media posts that [REDACTED] had previously put online. This was saddening evidence regarding the character of the offender and his morals. However, when the

[REDACTED] was made aware of the posts that would usually result in expulsion, he said that because the matter was before the courts, his hands were tied.

Barney's funeral service occurred at [REDACTED] and was streamed to the [REDACTED]

[REDACTED]. A guard of honour of over three hundred boys lined the streets of [REDACTED]. The school was very kind to us, and there is now a perpetual art ward in Barney's honour, as he was a prolific artist.

Barney was cremated, and his ashes are in a box in his bedroom that has not been changed since the day he left it.

The community of

, was excellent, and we had incredible support. Because of COVID, no family members could visit.

Many questions remain unanswered.

My wife, Bella and I had to sit close to the offender in court. We had to wait outside while the offender and his defence team had a private room available. Because of COVID restrictions, no public was allowed in court to support us.

The process showed that offenders are treated better than victims and their families.

The media did not have the facts to reveal the full truth of the crimes and initially reported it as an accident.

When a similar incident recently occurred on the Northern Beaches, my words now seem sadly prophetic.

The courts should not suppress freedom of information.

Imagine the change in policy moving through to changed behaviour if road crashes that result in the death of a person are subject to a "Safety Investigations Report," and these matters are made public and shared between states in Australia. Such as workplace-related or aviation deaths, where people can learn and act. Individual names can be redacted, not learnings.

I have followed up repeatedly with NSW Police and Transport NSW, who still need to confirm whether the alcohol interlock order is in place or being monitored. With no evidence of any mechanism for appropriate enforcement, I have to assume the alcohol interlock program is flawed.

From the outset of this tragedy, we have had to relive the circumstances of this case countless times following the CTP insurance program that is ineffective, outdated and cruel to people undergoing a traumatic event. My children have been directly impacted by the insurance company QBE's inappropriate handling of the matter. Inappropriate intrusions into our privacy have been made, and highly sensitive matters have been communicated without care or empathy. Often we have felt criminalised by the CTP process. My son's long-term girlfriend was excluded from any help. The insurance process has discriminated against my son for being a passenger, yet the driver was given leeway and the benefits

. It is a fact that we have been forced to negotiate with QBE the impact of my son's death for different members of our family under the same roof.

NSW Police have an important job, which is undeniably undertaken with professionalism and dedication in most cases. However, the current escalation of complaints to the Law Enforcement Conduct Commission

(LECC) was a pointless and futile process that deserves independent scrutiny.

Breath tests at crime scenes and Random Breath Tests are relevant to this submission in the broader context of road safety. The evidence of the significant reduction in RBTs and public policing in NSW, as reported by the NRMA and the AAA, suggests that the deterioration of standards and ignoring over thirty years of evidence that public policing and RBTs work is potentially a pointer that the NSW Police strategy could be out of kilter and worthy of independent scrutiny.

I was one of the initial founding committee members of the Road Trauma Support Group in March 2021—the voice of victims of road crime. I do this voluntary work so no other families have to endure the violent, cataclysmic, and enduring loss of a loved one. The justice system has let us down and must change, but we must also look for a generational change in attitudes to road safety.

The Road Trauma Support Group NSW (RTSG) is the voice of families impacted by road trauma. 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).

There is no single solution, but rather an intricate network of contributing factors that form a complex puzzle.

Ultimately, we must elevate intoxicated and reckless driving to the same level of societal abhorrence as domestic violence and cease treating vehicular homicide as a subordinate form of killing. This necessitates holding offenders accountable with commensurate measures matching their offence's severity. To make a generational change, we must bring the puzzle pieces together, starting with law reform.

A legal matter worth raising is that forensic tests for alcohol and drug testing need to be brought up to global standards in NSW.

These institutions, the Police, the NSW Police Forensic pathologist and the Office of the Director for Public Prosecutions could be described as being part of an "unofficial alliance" or "unholy trinity" that perpetuates an unhealthy status quo. They may collaborate informally to uphold existing systems and practices that serve their interests but may not necessarily benefit the broader community or promote positive outcomes. It is time for this to change.

Road crimes need to be extracted from the out-of-date Crimes Act of 1900 and given specific stand-alone legislation so that road deaths are not a subordinate form of killing. And so cases are pursued with more seriousness.

If we were to subject the laws concerning road crime to an autopsy, akin to that of a crime victim, it would reveal a system riddled with preventable deficiencies and shortcomings.

The judiciary must be scrutinised, and the inconsistency of sentencing of road crimes must be elevated. A light must shine a light on how offenders are being discriminated against or afforded lighter sentences according to which Magistrate or Judge presides on their case.

Recidivist driving offenders need to be targeted as they are six times more likely to kill.

Technology standards need to be more rapidly introduced in cars and for offenders, such as speed limiter technology and alcohol interlocks.

Much pressure is being applied to accelerate the adoption of new technology as the Australian Design Rules (ADRs) for road safety are years behind those of other developed countries. Inertia in the adoption of safe standards is costing lives and needs to be addressed particularly in light of the rapid introduction of new Electric vehicles (EVs) and semi-autonomous features.

The Road Trauma Support Group in NSW was officially launched at NSW Parliament House in November 2023, where I explained the evidence for why we needed to change in addition to our own many lived experience stories.

I wrote to and asked the Attorney General of the last government, Mark Speakman, to act. In November 2022, he announced a Law Reform Commission into Serious Road Crime. I am grateful for his actions and commitment to road safety. I look forward to the current Attorney General, Michael Daley, taking swift action on this review.

I wrote and met with Minister Victor Dominello to intervene in the CTP program after understanding from personal experience and others how dreadfully cruel the process is to seek support. He instructed the State Insurance Regulatory Authority to provide an enhanced service CTP to assist road Trauma Victims in November 2022. The Road Trauma Support Group NSW is collaborating with SIRA (State Insurance Regulatory Authority) to make changes for the better. NSW now has a dedicated resource within SIRA to assist our members with claims and meet regularly to improve twelve critical areas. The leadership of Mr Dominello and Dr Petrina Casey at SIRA deserve credit for supporting this initiative. The current Minister, Anoulac Chanthivong, whose portfolio includes CTP, is looking into matters..

I conceptually proposed, scoped and managed a Research Project that resulted in the first-ever research into the **Unheard Trauma of Fatal Road Crimes** in NSW by Fiftyfive5 Accenture. In 2023, they were awarded by the Research Society of Australia for excellence in this work. It provides groundbreaking insights based on over thirty in-depth interviews and a survey sample representative of the whole of NSW. This is publicly available and has been presented to all insurers participating in NSW's Compulsory Third Party insurance program.

I have led a collaborative relationship with Transport For NSW, which funds the Road Trauma Support Group NSW as part of a five-year arrangement. We presented to all regional safety officers to bring awareness to regional NSW and have an outreach program for regional NSW.

The Road Trauma Support Group NSW is, in effect, the 'Secondary Response Service' once the Police flashing lights have stopped and the media have moved on. There is a need to extend this service to people seriously injured in criminal acts on the road in the future.

The Road Trauma Support Group NSW are under an auspice agreement with the Homicide Victims Support Group NSW. The leadership of Martha Jabour, AOM has been instrumental in this rapid set-up and progress to build a regional trauma-informed support network. We run monthly support meetings face-to-face and online. We provide court support for families and ongoing programs. We benefit from the supervision of this program by the leading experts in this space.

We have a helpline, an innovative digital community to connect people with peers, and a support network 24/7. This program is the first of its kind in the world. Sadly, our online peer-to-peer support community is growing.

We have residential courses for impacted people with partners Quest for Life, who also work with first responders and PTSD-impacted veterans.

The Road Trauma Support Group has a good and evolving collaborative arrangement with the NSW Police to provide help for families and friends of people killed on the road from criminal acts. The NSW Police under the leadership of Assistant Commissioner Brett McFadden and Commissioner Karen Webb deserve full praise for supporting this community-led initiative. An aspect of good Policing that goes unreported.

In November 2023, we hosted, and I helped facilitate the inaugural World Day of Remembrance for Road Traffic Victims with Jenny Aitchison, the Regional Minister for Transport, Brett McFadden, Assistant Commissioner

for NSW Police and Head of Highway Patrol and the Secretary for Transport Josh Murray. In 2024, we are looking for a permanent memorial site.

I recently wrote and promoted the Australian Road Collision Reporting Guidelines for The Road Trauma Support Group NSW in national media. These are available www.rc-rg.com.au

I also drafted the Road Trauma Support Group NSW [reform manifesto](#). The manifesto is founded on evidence-based research and the lived experiences of The Road Trauma Support Group members. All points are pragmatic, specific, achievable, relevant, and urgently required to save lives.

The Chris Minns Government pledged to create an Independent Victims Commissioner and include road crime victims in the Charter of Victims Rights. We envision the role of the Independent Victims Commissioner (IVC) as crucial in providing a dedicated voice and actionable advocacy for the rights of road crime victims. The IVC would actively enforce victims' rights, ensuring they don't face their battles alone against insurance disputes, court complexities, and media intrusion. This new position would stand as a representative at a governmental level, playing a pivotal role in safeguarding and advancing the interests and protections of road trauma victims.

The Problems.

The system is broken, current approaches to reducing road trauma are not working, and NSW citizens are paying too high a price – the 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.

At the NSW Road Safety Forum held on 22 February 2024, Transport for NSW Secretary Josh Murray and Chief of the Centres for Road Safety and Maritime Safety Bernard Carlon described the jump in the number of people dying on NSW roads as “a crisis”¹.

In the 12 months to 30 March 2024, 362 lives have been lost in NSW. Ninety-one more people died in this 12-month period compared to the previous 12 months². (NSW Centre for Road Safety, 2024)

Alarming, the number of people dying on NSW roads during 2023 and into 2024 is trending sharply upwards, following a downward or steady trend up until 2022.

Compared with 2022, in 2023, there was a 36% increase in deaths where speeding was involved, an increase of 60% of deaths where fatigue was involved and an increase of 58% where alcohol was involved. Last year, there was a 69% increase in people being killed in country urban areas on roads with speed limits below 80 km/hour and an 89% increase in people killed across NSW on roads with speed limits below 50 km/hour.³

Risky behaviours are too often normalised by the Australian love affair with the car and the attitude that driving is an individual right rather than a privilege that comes with responsibility. Combined with the social acceptance of alcohol consumption, recreational drugs (both legal and not) and speeding, this is a recipe for disaster.

Drivers who commit road crimes, sometimes encouraged by their passengers and others, can be encouraged to engage in risky behaviours because of a lack of visible policing and a light-touch sentencing regime.

¹ Transport for NSW, NSW Road Safety Forum 2024

(<https://www.transport.nsw.gov.au/roadsafety/what-we-do/nsw-road-safety-forum-2024>)

² Transport for NSW, Centre for Road Safety, statistics (<https://www.transport.nsw.gov.au/roadsafety/statistics>)

³ Transport for NSW, 2024 NSW Road Safety Forum, Attendees Information Pack, Feb 2024

There is no enforced Australian legislation around accessorial liability for explicitly dealing with serious road crime, that is, for letting or getting into a car with an impaired driver or otherwise encouraging or turning a blind eye to an impaired driver.

The penalty regime in NSW does not reflect road crime's destructive and detrimental consequences on victims and community members. The penalties do not sufficiently denounce and deter this conduct to minimise its prevalence in our community.

Effective rehabilitation programs, including retraining, relicensing, and interlock programs, are lacking for serious road offenders. The current penalty framework offers little deterrent or tracking for drivers who continue this criminal course on our roads.

FiftyFive5/Accenture's ground-breaking research on the impact of road crime in NSW, *The Unheard Trauma of Fatal Road Crimes in NSW (2023)*⁴, provides a clarion call to action and explains the ripples of road trauma that are felt throughout the NSW community.

The research shows that road trauma has severe economic and social consequences for individuals and the community, including mental health challenges, loss of faith, decrease in work/study performance, loss of friendships, suicidal thoughts and alcohol/drug/gambling problems.

The research is evidence that community expectations are not being met, with:

- 62 per cent of people support the charging of drivers with vehicular manslaughter when they kill someone on the road;

⁴ Road Trauma Support Group NSW and FiftyFive5 Accenture, *The unheard trauma of fatal road crimes in NSW* (April 2023)

- 73 per cent believe punishments for driving on drugs should be harsher;
- 59 per cent want public investigations and reporting of causes of fatal crashes and
- 69 per cent support participation in Victim Impact Panels for offenders to regain their licence.⁵

Current Laws: Not Fit for Purpose.

The existing provisions of the Crimes Act 1900 (NSW) dealing with serious road and dangerous driving offences (in particular in Part 3 Division 6 and manslaughter) (serious road crime) and accessorial liability provisions are not fit for purpose.

Outdated Laws Fail to Curb Road Crime Epidemic in NSW.

New stand-alone legislation in the form of a Road Crimes Act should become the centrepiece of reform. Implementing a Road Crimes Act alongside a Safe Systems Approach for Effective Reform. Learning from successes like Sweden.

The legislation and guideline judgement of R v Whyte (2002) are decades old. They are no longer the correct or appropriate instruments to sentence, reduce road crime, and protect our community.

The R v Whyte guideline judgement is outdated and must be eradicated by introducing new, overriding legislation. New provisions drafted within new legislation to encapsulate an offender's objective seriousness, moral culpability, and aggravating and mitigating factors will provide a more transparent guideline for dealing with serious road crimes.

⁵ Road Trauma Support Group NSW and FiftyFive5, *The unheard trauma of fatal road crimes in NSW* (April 2023)

Road crime needs to be recognised 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. The crucial aspect requires an attitudinal shift amongst all stakeholders, which will lead to behavioural changes by systematically altering mindsets and strategies to combat this crime like our community has addressed the attitudes surrounding alcohol-fuelled violence, one-punch assaults, revenge porn and domestic violence.

Cultivating a steadfast attitudinal and cultural mindset shift that road crime will not be tolerated in any circumstances will decrease road-related crimes and dangerous driving. Everyone in the NSW community, including government officials, professionals who interact with bereaved families, the media, and the wider community, can play a role in both reducing fatalities on NSW roads and in minimising the traumatic aspects of the experience for those who find themselves in the horrific situation of losing a loved one due to the criminal act of another.⁶

The Consultation Paper identifies the complexity of road crime identification, conviction, sentencing, and parole options. The discrepancy in penalties and sentencing outcomes for road crime is both distressing and insulting for the community and victims of crime. It does little to address the increasing numbers of lives lost and families damaged irreversibly.

⁶ Road Trauma Support Group NSW and FiftyFive5, *The unheard trauma of fatal road crimes in NSW* (April 2023)

The loss of a loved one due to a sudden, violent and unexpected act results in unfathomable and enduring grief. Witnessing the perpetrator of the crime and the people who stood aside and let the crime happen go unpunished and released without any form of rehabilitation amplifies pain and suffering. Lack of justice in the current system contributes to avoidable secondary trauma and potential recidivists reoffending.

The act of killing inflicts immediate trauma, but the prolonged judicial process, often lasting up to five years, exacerbates unnecessary cruelty and amplifies enduring grief.

The trivialisation of road crime as an 'accident' is wrong.

The glaring inconsistency in sentencing must be measured, published and publicly available. The level of justice is hit-and-miss at best, depending on the judge or magistrate you get, which just doesn't feel right. And it isn't.

1. Recommendation New Law: “Road Crimes Act” Singular Legislation.

Existing serious road crime offences are not fit for purpose. The foundation for legislation needs to reflect the proportionality, actual criminality, and destruction associated with these crimes. These crimes involve a wilful neglect of human life and actions. A road death caused by a criminal act cannot be described as an accident in the same way as milk spilt on a kitchen table.

Public policy and legislative reform are the linchpins for addressing the current road trauma crisis. Foundational to this reform is establishing new serious road crime laws, delineating more fitting offences, penalties, and sentencing guidance to yield improved outcomes and align with community expectations.

A comprehensive framework of indictable offences and penalties for vehicular misconduct must be clearly outlined within a singular Act to curb fatalities and severe injuries resulting from road crimes effectively. Such legislation should encompass tailored provisions to address criminal acts on the road, ensure accessorial accountability, and address recidivist driving offenders.

A consolidated road crimes framework for NSW would streamline legal processes, enhance consistency and equity in the pursuit of justice, and simplify the complexity of current legislation. Moreover, it would serve as a centralised platform to raise awareness regarding the gravity of road crime and complement a safe systems approach to road management.

Adopting strong legislative measures signals to the community that road crime is intolerable. Just as responses to other forms of criminal behaviour,

such as firearm offences and domestic violence, have been codified in standalone legislation, similar attention must be given to addressing road crime.

Dr Kerry King's meticulously researched book *A Lesser Species of Homicide* recommended a comprehensive revision of penalties for all driving conduct. This underscores the necessity for substantial change. Moreover, altering the narrative surrounding road crime, particularly in the language used by authorities and within legal frameworks, is pivotal in ensuring appropriate responses and outcomes.

The term 'accident' when referring to road incidents undermines the severity of the situation and diminishes the perpetrator's responsibility. Instead, adopting terminology that accurately reflects the avoidable nature of these incidents is essential in reshaping public perception and garnering support for legislative reform.

2. Recommendation for New Road Crime Offences.

Recommendation 2a: A New Vehicular Homicide Offence.

Serious road crimes resulting in fatalities demand immediate review and modernisation, necessitating the introduction of a new offence of vehicular homicide with penalties akin to those for homicide outlined in the Crimes Act 1900. Current laws often marginalise serious traffic offences, treating them as mere traffic violations rather than criminal acts. Therefore, clear definitions within dedicated legislation for vehicular homicide are essential. Operating a vehicle recklessly, whether due to alcohol, drugs, fatigue or excessive speed demonstrates a disregard for human life. Introducing a new offence would unequivocally signal the severity of such

actions and align with the essential purposes of sentencing: punishment, deterrence, protection, accountability, denunciation, and acknowledgement of harm. This measure would demonstrate a commitment to addressing road crimes, deter illegal activities, and appropriately punish offenders.

Recommendation 2b: Introduce new offences for serious road crime.

Reflecting the proportionality of serious and recidivist road crimes rather than continuing to treat them as lesser crimes.

All road crime offences within the Crimes Act 1900 (NSW) and the Road Transport Act 2013 (NSW) warrant immediate review. Establishing a new instrument of law is essential to introduce a distinct offence of vehicular homicide and a comprehensive framework of offences under a new Road Crimes Act.

Driver conduct, including those who enable illegal driving, must be thoroughly addressed in this revamped framework. I advocate for eliminating legal discretion for individuals engaging in dangerous driving behaviours, such as speeding or driving under the influence, treating these actions as deliberate and criminal rather than momentary lapses. Individuals of any age operating a motor vehicle and engaging in dangerous or intentionally dangerous driving behaviours should not be granted the current legal discretion.

The current focus on the time of impact in judicial considerations limits the assessment of objective seriousness. It is imperative to extend scrutiny to all offender actions before and after the crime, including factors like awareness of impairment risks.

Legislation must also clarify causation, ensuring that dangerous driving leading to death or grievous bodily harm is effectively addressed. Ambiguous terms in current laws, such as "very substantially impaired," should be removed to avoid confusion and maintain clarity.

The inconsistency in sentencing for driving offences underscores the need for reform. Speeding, running red lights, and reckless driving often escape severe penalties despite their grave consequences. A revised framework should address loopholes, ensure appropriate penalties for first time offenders, repeat offenders, and standard non-parole periods.

Exploring technological solutions to target repeat offenders and enhancing penalties for failing to stop and assist at crash scenes are critical initiatives. Definitions for failing to stop and help must be reinforced, and penalties should be heightened to deter such behaviour effectively.

Finally, to effectively address the rise in risky driving behaviours, a thorough review of predatory and menacing driving offences, focusing on clarifying definitions and enhancing penalties, is warranted.

Recommendation 2c: New Offence of Accessorial Liability.

Accessorial liability should be included in the New Road Crimes Act to encourage people to step in or face the repercussions of their contributory negligence.

The existing law concerning accessorial liability in road crime must be written and enforced. Current legislation solely targets the driver, disregarding any other individuals who may have contributed to the criminal act, such as passengers or adults who ignore their children's

unlawful actions and people who encourage illegal behaviour. I direct the LRC's attention to the case of R v Merrington [2020].

Consistently applying significant sentencing to accessorial offences is crucial for reducing serious road crime. Sending a strong message to the community that such conduct will be met with severe punishment is a powerful deterrent.

It's imperative to impose sentences that deter passengers, drivers, and the broader community from engaging in behaviours that encourage or ignore risky and dangerous conduct leading to road crimes.

Those involved in enabling law violations should be held accountable under complicity laws existing in NSW, such as joint criminal enterprise (JCE) principles. Introducing a new offence for non-drivers in the New Road Crimes Act clarifies that assistance before, during, or after the offence can lead to liability.

A new serious road crime offence of accessorial liability should encompass various actions, including failing to prevent criminal driving behaviour, immediately calling emergency services, and responsibly serving alcohol in public venues and private homes.

Implementing accessorial liability for impaired driving could transform road safety efforts by emphasising accountability and fostering responsible behaviour. This cultural shift can make impaired driving socially unacceptable, with swift and severe consequences akin to society's view on violent assault.

3. Recommendation for Penalties for Road Crime.

An imperative is that penalties correspond proportionately to the offence's severity and its resultant impact and consequences.

The application of penalties must meet the required standards and adequately fulfil the sentencing purposes, as outlined in section 3A of the Crimes (Sentencing Procedure) Act 1999.

A cornerstone principle of this section is to guarantee that the offender faces punishment, deterrence, and rehabilitation before being allowed to drive again so the community is safe. It seeks to condemn the conduct, holding the offender accountable for their actions while acknowledging the harm inflicted on the victim and the community.

The unacceptable number of road deaths or serious injuries in NSW (and Australia) persists at an unacceptably high level, with speed, alcohol and drug-impaired driving being significant and avoidable contributors. There is a pressing need to strongly condemn and denounce the behaviour associated with these offences by imposing substantial sentences. It is essential to communicate effectively to the community and with community support that such reprehensible conduct will be met with severe punishment, serving as a powerful deterrent.

Current penalties do not adequately reflect the prevalence and persistent nature of road crimes committed by individuals in the community. To safeguard the community and address the rising trend of road crime, penalties must be substantial and impactful, especially for serious first time offenders not just recidivist offenders. Implementing mandatory disqualifications, compulsory participation in traffic offender rehabilitation programs, engaging in Victim Impact Panels, imposing financial and

reputational consequences such as additional licensing fees and criminal convictions, and restricting access to certain motor vehicles are practical and productive measures.

Virtually every community member utilises roads in some capacity, whether as a driver, passenger, or pedestrian. The vast majority are drivers themselves. We all must use our roads without fear of encountering reckless drivers who disregard the consequences of their actions.

The United Nations Crime Prevention and Criminal Justice educational advice underscores five fundamental justifications of criminal punishment: retribution, incapacitation, deterrence, rehabilitation, and reparation. Unfortunately, none of these are specifically and precisely addressed in the National or State Legislation when road crimes occur.

I propose a comprehensive 'data-driven' approach focusing on early warning signs of dangerous behaviour, robust early driver training, and mandatory, intensive rehabilitation/retraining programs for dangerous individuals and high-risk groups.

Monitoring should form part of the sentence.

Imagine this happening every day, and envision how you would feel if a driver who killed your loved one received a light sentence without any rehabilitation program in place. Recent sentence outcomes have been utterly insufficient and unsuitable, as maximum sentences are seldom imposed.

I recommend implementing a practical solution: drafting a new road crime Act with clear penalty options and new standard non-parole periods. It is imperative to establish new sentencing guidelines that are regularly

refined to ensure they remain relevant and practical. Moving forward, after introducing the new Road Crimes Act, an ongoing review process must be enforced to align with the new offences and hierarchy of offences, similar to public reporting road statistics, to shine a light on the consistency of judges and magistrates currently active.

Maximum penalties for vehicular homicide must be commensurate with those of other homicide offences, including Standard Non-Parole Periods (SNPPs) and Compulsory Driver Rehabilitation Programs (CDRPs). A comprehensive package of new programs must be mandated for serious offences as a condition of sentence or release. These programs should include education, retraining, new driving tests for offenders, and implementing technology such as alcohol interlocks and black box telematic monitoring to reduce the likelihood of repeat offences.

The administration and enforcement of these programs must be overseen by a dedicated administrative function that directly engages with and informs NSW Police of any offender indiscretions. Currently, the limited alcohol interlock program in NSW is hopelessly inadequately managed, and there is no transparency in up-to-date public reporting.

Implementing new technology to enhance road safety measures would represent a sound business case for effectively using public funds. While upfront costs may be associated with adopting and implementing these technologies, they should not be viewed solely as costly investments. There is the potential for substantial cost savings from insurance claims that can be funnelled back into effective trauma relief programs.

Firstly, by investing in new technology, such as alcohol interlocks and black box telematics, we can significantly reduce the occurrence of road crashes, fatalities, and serious injuries. Reducing road incidents (death and serious

injury) would lead to long-term savings for the government regarding healthcare expenses, emergency response services, and infrastructure repairs.

Implementing these technologies can also improve efficiency in law enforcement and justice systems. For example, black box telematics can provide valuable data for investigating road incidents, leading to more effective law enforcement and judicial outcomes. This can result in savings in terms of legal proceedings and judicial resources.

Additionally, investing in road safety technologies can have broader economic benefits. Safer roads can enhance public confidence and encourage increased economic activity, particularly in tourism, transportation, and commerce.

Furthermore, the intangible benefits of saving lives and preventing serious injuries must be considered. Beyond economic considerations, ensuring the safety and well-being of citizens is of immense societal value.

In summary, while initial costs may be associated with implementing new road safety technologies, the potential benefits far outweigh these expenses. By preventing crashes, reducing healthcare costs, improving law enforcement efficiency, and fostering economic growth, investing in road safety technologies represents a prudent and effective use of public funds.

I strongly recommend the participation of the insurance regulator, the State Insurance Regulatory Authority, to assist NSW insurance companies in incentivising good drivers with lower insurance premiums. As a deterrent, consider pushing for higher Compulsory Third-Party premiums for recidivist road offenders.

Recommendation 3a: Penalties – Vehicular Homicide.

Vehicular Homicide - maximum penalties must be set consistently and in line with other crimes that result in death—and minimum sentencing protocols.

Recent developments in England underscore a stark contrast, highlighting the glaring disparity in sentencing between NSW and Australia.

In England and Wales, penalties for causing death by dangerous driving and for careless drivers who kill while under the influence of drink or drugs have been significantly increased, effective June 2022. Drivers who cause death by speeding, racing, or using a mobile phone could now face sentences equivalent to manslaughter, with maximum penalties raised from 14 years to life imprisonment.

NSW's Illusionary 'Correction' Orders Exposed as Ineffective and Absurd.

Incredibly, Intensive Correction Orders (ICOs) are still considered custodial. Yet, they paradoxically entail individuals fulfilling community orders unsupervised, a practice deemed benign, devoid of punishment, rehabilitation, or deterrence for offenders, thus categorically ineffective and disrespectful to victims of road crime. To explain this, I will use a world-famous story to show how inept the NSW program is in a way that is intended to be memorable.

Once upon a time, in the land of New South Wales, there existed a peculiar policy known as Intensive Correction Orders (ICOs). Like the vain emperor in Hans Christian Andersen's tale, NSW legislators and successive Attorney Generals were convinced that ICOs were the epitome of justice and rehabilitation.

ICOs were touted as a miraculous solution to the problem of overcrowded prisons. Their advisors assured the legislators that ICOs would be a revolutionary approach, offering a blend of punishment, rehabilitation, and community service.

But alas, like the invisible fabric weaved by the cunning weavers in Andersen's story, ICOs were nothing more than a clever illusion. Despite their lofty promises, ICOs left much to be desired.

ICOs were paradoxical in nature. While considered custodial, they required individuals to fulfil community orders unsupervised. This practice baffled many, for how could punishment be served without supervision?

Yet, despite their apparent flaws, ICOs remained unquestioned and unchallenged by the legislators. It seemed that no one dared to speak out against the folly of ICOs, much like the subjects in Andersen's tale who pretended to see the emperor's invisible clothes.

But just like the brave child who spoke the truth in Andersen's story, perhaps one day someone will finally reveal ICOs for what they truly are: a misguided and ineffective policy that fails both offenders and victims alike.

I recommend the abolition of ICOs, replacing them with Compulsory Driver Rehabilitation Programs (CDRPs).

Recommendation 3b: Penalties – Effective deterrents, disqualification, the *Compulsory Driver Rehabilitation Program (CDRP)*.

License disqualification periods fall short of meeting the expectations of victims and the community regarding serious road crime. I strongly

advocate for a substantial increase in default and minimum license disqualification periods, proportionately extended for second and subsequent offences. Recidivists must only be granted the right to drive on our roads once they have demonstrated their roadworthiness beyond doubt.

In tandem with elevating license disqualification periods, courts must mandate specific **Compulsory Driver Rehabilitation Programs (CDRP)** tailored to tackle the recurrence of risky driving behaviour. These programs are essential to guarantee that offenders are thoroughly rehabilitated before regaining their licenses. It's imperative to raise the legal duty of care within the licensing program to ensure the safety of all road users.

Recommendation 3c: Penalties - mandatory alcohol interlocks to be enforced for all convicted drunk driving offenders (alternative impositions for drug-impaired offenders).

In addition to imposing maximum penalties for all serious road crimes, I adamantly advocate for the mandatory implementation of Alcohol Interlocks for all convicted Drink-Driving Offenders for a period of not less than twelve months. It's crucial to enshrine the enforcement of this program in legislation, with a dedicated agency assigned to oversee its implementation and reporting.

Extensive research, such as that conducted by Mothers Against Drunk Driving (MADD) in the US, unequivocally demonstrates the effectiveness of Alcohol Interlocks in curbing drunk driving incidents. Shockingly, MADD's findings revealed that individuals caught drunk driving had, on average, driven under the influence a staggering 80 times before being charged, arrested, and sentenced. Furthermore, MADD's 50-state report in 2022

revealed that ignition interlocks successfully prevented 3.78 million drunk driving attempts over 14 years.

I call for the NSW Government to independently audit and publish data on the effectiveness of the current Mandatory Alcohol Interlock Order program.

Given the compelling evidence (from other jurisdictions) of their effectiveness and the availability of advanced technology, the implementation of Mandatory Alcohol Interlocks is not only warranted but imperative for ensuring road safety and preventing further tragedies caused by drunk driving. There is no longer an excuse to say alcohol interlocks do not work now that facial recognition technology is available.

Austrroads' publication Effectiveness of Drink Driving Countermeasures: National Policy Framework, provided a policy and regulatory framework for reform, including the following key recommendations to reduce drunk driving across Australia:

- Extending a lower legal BAC limit to more drivers;
- proactively improving general deterrence through more highly visible and randomised enforcement, combined with covert operations;
- expanding the use of interlock programs with enhanced monitoring and case management;
- fast-tracking vehicle-based systems to prevent alcohol-impaired driving.

NRMA NSW's leading road advocate organisation's members expressed deep concern about drunk driving, ranking it their second biggest road safety issue. They strongly support increased police presence and Random Breath Testing (RBT) initiatives to enhance road safety. However, recent data indicates a concerning decline in RBT levels, with only half of the

recommended tests being conducted in NSW. This trend is alarming, especially considering that alcohol-related crashes have claimed an average of 52 lives annually over the past five years, constituting 17% of all road fatalities in NSW. NRMA calls for at least 1.1 random breath tests per year per licence on issue, with a long-term goal of achieving 1.5 tests annually. Adequate planning, resourcing, and funding are essential to ensure RBT initiatives' effectiveness and save lives on NSW roads.

I contend that the current NSW strategy for RBT is counter to the principle that people are less likely to behave in a criminal act if they are likely to get caught. Because the current NSW Police position and lack of intentional activity on RBT is counter to over thirty years of evidence-based research, I recommend the LRC elevate this issue to the NSW Police Minister Yasmin Catley for consideration as a contributory factor that could significantly reduce fatalities. As stated by the NSW Premier, road safety is everyone's responsibility. The experts are saying, based on research, that current NSW Police RBT strategies won't help unless attitudes within the Police to RBTs change.

If law enforcement agencies need more resources or prioritise other strategic initiatives, outsourcing random breath test (RBT) programs to private enterprises should be considered.

As an advocate for road safety, I firmly believe in the effectiveness and affordability of modern technology. To combat alcohol-related incidents on our roads, I strongly advocate for the mandatory installation of alcohol interlocks for all individuals convicted of drunk driving. This proactive measure is essential in reducing alcohol-related road trauma and shaping public perceptions, ultimately leading to safer roads for all.

The offenders themselves must fund this technology, and I support including facial recognition technology and telematics integration as potentially effective measures to enhance its efficacy. By implementing these measures, we can take significant strides towards preventing drunk driving incidents and safeguarding the lives of road users.

The current framework outlined in the Road Transport Act 2013 and the Road Transport (Driver Licensing) Regulation 2017 purports to provide a basis for addressing driving offences through mandatory interlock programs. However, recent research conducted by Sara Rahman on the effectiveness of alcohol interlocks reveals significant areas for improvement in the current policy.

The Mandatory Alcohol Interlock Program (MAIP), initiated in February 2015, aimed to address high-range and repeat PCA offences. Despite expansion efforts in December 2018 and June 2021 to include mid-range drunk driving and alcohol drive under the influence (DUI) offences, the research indicates that interlocks only moderately reduce drunk driving following their removal.

The existing MAIP requires further refinement to deter drunk driving effectively. I advocate amending the MAIP to encompass all drunk driving offences and mandating that courts issue a Mandatory Alcohol Interlock Order (MAIO) for every conviction. Additionally, minimum disqualification and interlock periods should be extended, along with stricter criteria for transitioning from the disqualification period to the interlock period.

It is imperative to enshrine in legislation the enforcement of MAIP by the NSW Police Service and Transport for NSW to ensure its effective implementation. These amendments are essential steps towards enhancing road safety and reducing the incidence of drunk driving that

causes death or serious injury. With effective technology and the support of key government bodies, any program will remain toothless and ineffective.

Social science research consistently demonstrates that the effective implementation of measures like alcohol interlocks for drunk drivers profoundly impacts not only the individuals directly affected but also their peers and broader community attitudes towards safe behaviour. By observing the tangible consequences of having alcohol interlocks fitted, peers are more likely to internalise the severity of such repercussions and subsequently alter their attitudes and behaviours towards drunk driving. This ripple effect contributes significantly to fostering a positive societal shift towards responsible and lawful conduct on the roads.

We need to foster a society with laws that do not tolerate dangerous, antisocial driving. Rehabilitation programs should reinforce this.

There exists a paradox in societal perceptions of laws concerning drug-impaired driving. While there's a general agreement among the public that driving under the influence of drugs is unacceptable, the matter is far from straightforward. A widely held belief is that the presence of some residual drugs in one's system may not necessarily lead to impairment. Resolving this issue is essential to harmonise Police enforcement practices with scientific realities and public understanding. Many view the current legislation as outdated and ineffective in addressing the complexities of drug-impaired driving in modern society.

Consideration should be made for appropriate mandatory drug interlocks for the rehabilitation of dangerous drivers.

Recommendation 3d: Penalties for Repeat traffic offenders.

Definitions for repeat offending must include repeat traffic offences in totality.

The use of technology, such as black box and telematic data for tracking repeat speeding offenders, must be increased monitoring can form part of the sentence and act as a deterrent. Potential integration with insurance provisions under the Compulsory Third Party Insurance Program should be considered.

Serious road criminals must be kept off our roads, and face significantly increased penalties and insurance costs, reflecting the risk they represent to other road users.

Drivers with one or more offences (including high-risk offences) in the past five years are overrepresented in fatal and serious injury crashes, while drivers with no offences are underrepresented. The current system for regulating traffic offences is complex and changing. Existing penalties and interventions include:

- licence suspension for accumulation of demerit points
- licence suspension for certain speeding offences
- driver disqualification for certain offences after conviction in court
- the (ineffective) alcohol interlock program
- vehicle sanctions, such as seizure or forfeiture of vehicles
- speed inhibitor conditions
- prevention courses such as the Traffic Offender Intervention Program, and the Sober Driver Program, and

- increased penalties for certain second or subsequent driving offences.⁷

Those who exceed the speed limit by more than 45 km/hour pose an extreme danger on the roads. However, to better reflect the severity of the offence, the benchmark should be lowered to no more than 30 km/hour. After all, crashing at 30 km/h over any designated speed limit significantly increases the likelihood of fatalities.

Not to diminish the call for harsher penalties for serious first-time offenders. Existing penalties for recidivist road offenders are pitifully low and need to be changed.

Despite garnering attention, means-tested fines are not advisable due to the potential manipulation of an individual's earnings.

Based on research and best practices in traffic safety, I firmly advocate for mandatory obligations for serious repeat traffic offenders before they are allowed back on NSW roads as part of a Compulsory Rehabilitation Program (CRP). These obligations should include:

1. Knowledge test to assess the understanding of traffic laws and regulations. Including a pledge to adhere to road laws.
2. Field driving test to evaluate practical driving skills and adherence to road rules.
3. Completion of an online education training and rehabilitation program, with a recommendation to expand and mandate the Traffic Offender Intervention Program (TOIP).
4. Installation of alcohol interlocks, including for all first-time DUI offenders, to prevent drunk driving incidents.

⁷ NSW Sentencing Council, *Repeat traffic offender report* (September 2020)

5. Mandatory real-time telematics monitoring for repeat speeding offenders, ensuring compliance with speed limits.
6. Imposition of license conditions and restrictions tailored to individual offender behaviours.
7. Participation in Victim's Impact Panels to instil awareness of the consequences of their actions on victims and their families.
8. Inclusion in a Dangerous Driver Register to track and monitor repeat offenders' behaviour on the roads and to be made available to Government employers hiring employees with a requirement to drive.

These measures, grounded in empirical evidence, research and social impact studies, are essential to effectively rehabilitate repeat traffic offenders and ensure safer roads for all NSW residents.

We must acknowledge and actively support the advancements in vehicle safety technology, including implementing speed limit imposition, point-to-point cameras, data collection through vehicle black boxes, and using alcohol interlocks to prevent impaired driving. These innovations represent crucial tools in our ongoing efforts to address road trauma effectively.

Furthermore, driving while disqualified must be unequivocally recognised as a serious criminal act, warranting significant consequences. Instead of extending the suspension period, offenders should face the possibility of a jail term, reinforcing the gravity of their actions and deterring further danger to the community. A car is a lethal weapon.

4. Recommendation for Sentencing Principles and Procedures.

The LRC must recognise the glaring reality: vehicular homicide cannot continue to be regarded as a lower form of homicide due to disproportionately lower maximum sentences. Relying on outdated case law for charges and sentencing is yielding unjust outcomes.

It is imperative to address the prevailing sense of injustice stemming from inconsistent sentencing for criminal road behaviour compared to other fatal crimes. Minimal sentences, benign community service, or suspended licenses simply do not suffice.

Recommendation 4a: New sentencing guideline framework.

New sentencing guidelines that recognise that deaths and serious injuries caused as a result of serious road crime must receive sentencing outcomes consistent with sentencing outcomes for death and serious injury in other criminal circumstances. An imperative is that penalties correspond proportionately to the offence's severity and its resultant impact and consequences.

I recommend the LRC recommend revamping the sentencing framework with unwavering conviction:

1. Overhaul sentencing principles to minimise discretion and align sentencing guidelines with the new Road Crimes Act provisions, ensuring utmost transparency in reporting all decisions.
2. Discard the outdated R v Whyte guideline judgement for dangerous driving offences and establish new legislation to supersede the need for such guidelines.

3. Regular evaluations of judicial decisions to uphold community expectations should be conducted, embedding an assessment process within the new Act for five-yearly reviews.
4. Review serious road crime cases at the Court of Criminal Appeal to rectify under-sentencing, strengthening the message on the gravity of road crime.
5. Enhance aggravating factors to include specific references to committing crimes while in control of a vehicle, emphasising the vehicular aspect of the offence.
6. Count previous road offences as criminal acts toward defining recidivist drivers, triggering higher baseline sentencing.
7. Refrain from granting mitigating factors based solely on age, background, psychiatric condition, or moral culpability without meeting a higher evidentiary burden.
8. Reassess the approach to discounting sentencing, recognising that remorse, repentance, and risk of reoffending cannot be systematically measured.
9. Advocate for consistency in sentencing offenders across all courts, rooted in applying relevant legal principles outlined by new legislative instruments rather than past practices.
10. Advocate for the regular publication of NSW road crime sentencing outcomes and conduct longitudinal research to assess trends, ensuring evidence-based policy and statutory responses.

Recommendation 4b: Victim Impact Panel programs.

I recommend that Victim Impact Panel programs be mandated for serious offenders and enshrined in legislation for post-sentence rehabilitation.

The purpose of the Victim Impact Panel (VIP) program is to help drunk and drugged driving offenders recognise and internalise the lasting and long-term effects of substance-impaired driving. The classes seek to create

empathy and understanding of the tragedy, leave a permanent impression that leads to changes in thinking and behaviour and prevent future offences.

At a VIP, victims, survivors and others impacted by substance-impaired driving crashes speak briefly about the crash in which they were injured and/or a loved one was killed or injured. They share a first-person account of how the crash impacts their lives. They do not blame or judge. They simply tell their stories, describing how the crash affected their lives and the lives of their families and friends. I recommend enshrining the Victim Impact Model in legislation as a means of rehabilitation, not as a tool to diminish sentences.

Extensive evidence supports the efficacy of Victim Impact Panels in significantly reducing recidivism rates among offenders. By exposing serious offenders to the profound emotional and psychological toll of road trauma, these panels play a pivotal role in reshaping attitudes and behaviours. Impact that will flow through to change societal attitudes in a better way.

To ensure the successful and rapid introduction of Victim Impact Panels, the NSW Government can draw from the success of programs like Mothers Against Drunk Driving's Victim Impact Panel, which brings together victims, families, and first responders affected by drunk driving crashes, NSW should embrace Victim Impact Panels as a transformative tool in addressing road trauma.

In conclusion, incorporating Victim Impact Panels into legislation is paramount to combating road trauma effectively. These measures serve as powerful tools for justice, accountability, and deterrence, ensuring that

offenders face the full consequences of their actions while offering support to victims and their families.

Recommendation 4c: Standard Non-Parole Periods (SNPPs).

Sentences for serious road crime that results in death must include a standard non-parole period proportional to other serious violent crimes.

The complexity inherent in considering SNPPs and guideline judgements underscores the need for a standardised approach to sentencing.

As the community grapples with the alarming rise in road trauma, there is a growing expectation that serious offences resulting in death or injury should be met with effective custodial sentences.

The NSW Sentencing Council's suggestion that SNPPs should generally constitute 37.5% of the maximum penalty reflects institutionalised judicial bias and not the impact that ineffective sentencing has on road trauma victims. Given the severity of vehicular homicide, I advocate for a higher SNPP, ideally set at >50%, to accurately reflect the gravity of these crimes.

The delusional notion that dangerous driving offences should not be subject to effective SNPPs must be revisited.

- Breaking the law is breaking the law.
- Homicide is Homicide.
- A car is a lethal weapon.

The evolving landscape of sentencing practices and the increasing awareness of sentencing inadequacies necessitate a comprehensive review of existing policies. Future participants in the Sentencing Council Recommendations should include Community Advocates.

The New Road Crimes Act must offer a more objective and community-oriented approach to sentencing, aligning with the public's expectation of appropriate penalties for serious road crimes. Considering factors such as deterrence and the exceptional harm inflicted, justice and a potent deterrent against future offences must be served.

5. Recommendation for Jurisdictional Solutions: Appropriate jurisdiction of higher courts.

I recommend hearing serious road crime offences only in the District or Supreme Court. If you are old enough to drive, you have the responsibility and duty of care.

A new Road Crime Act must categorise all offences as strictly indictable. There is a gaping loophole in the law for serious road crime.

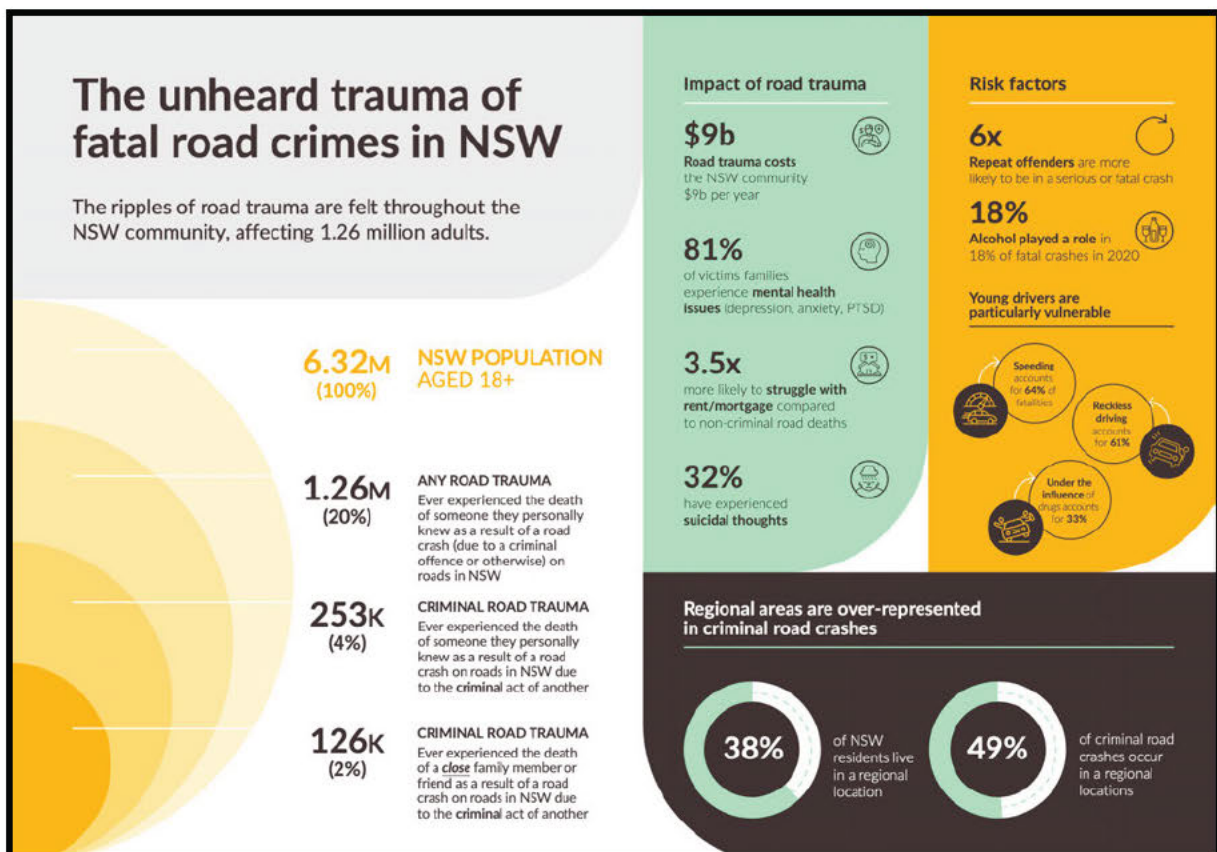
Under the proposed legislation, all serious road crimes must be tried on indictment and classified as strictly indictable. This entails consolidating all significant road crime offences under a standalone Act, ensuring they are exclusively heard by either the District Court or Supreme Court.

It is crucial to eliminate the option of hearing serious road offences summarily in the Local Court, as its sentencing jurisdiction may need to address the severity of these crimes adequately. Additionally, road crimes resulting in death should never fall within the jurisdiction of the Children's Court, given the gravity of the consequences involved.

This legal recommendation is founded upon the necessity to ensure that serious road offences are adjudicated in a manner that aligns with their severity and facilitates the delivery of appropriate justice.

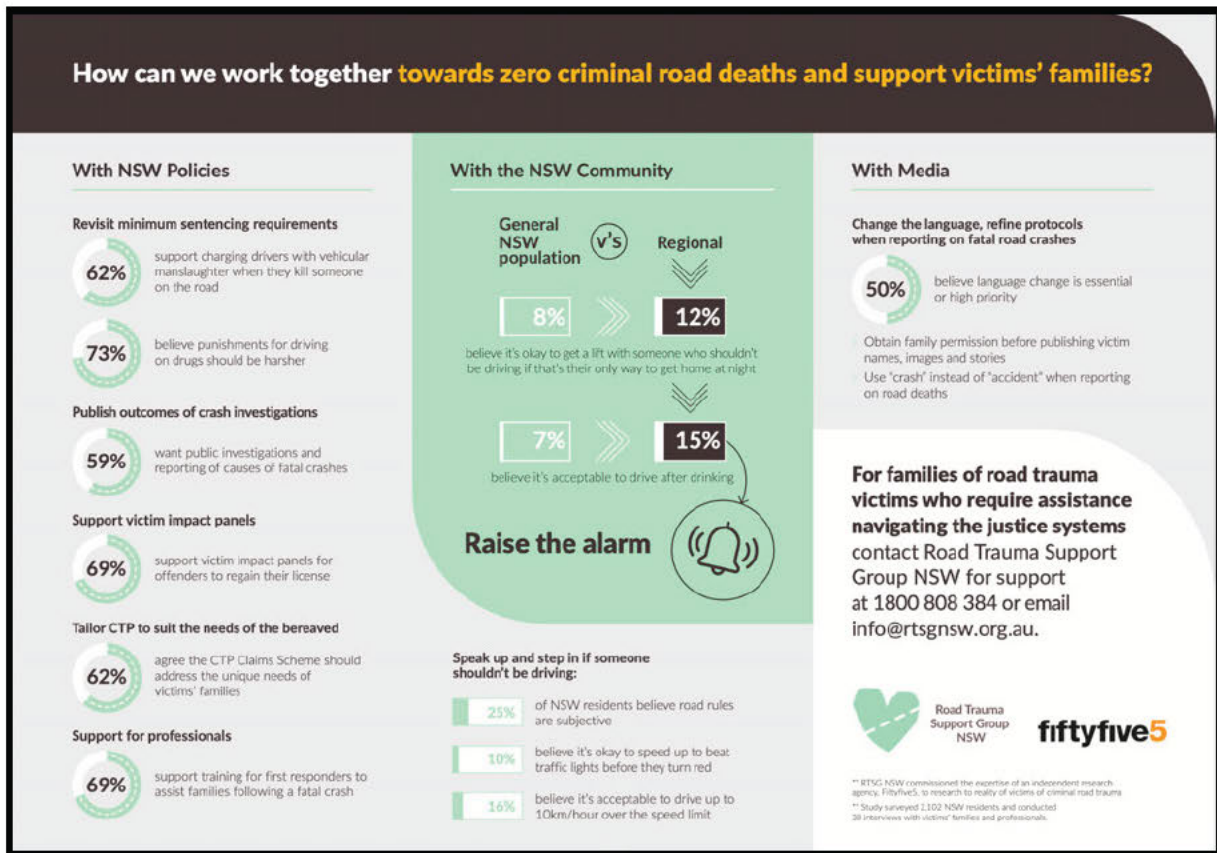
6. Recommendation: New approach to designing laws and Victim-Centred Services.

Recommendation: Embed a victim-centred design approach in new laws and services, incorporating road crime into the Charter of Victims' Rights. The LRC should advise the NSW Government to engage victims and stakeholders in developing a leading policy addressing the road trauma crisis. This policy should shift the cultural support of road user obligations and prioritise the seriousness of road deaths and injuries akin to other heinous crimes. To grasp the impact, the LRC and policymakers should review "The Unheard Trauma of Fatal Road Crimes in NSW" and authentically engage with victims' families, friends, and support groups.



Good policy must prioritise community needs, integrate victim experiences, and draw lessons from successful policy shifts. Immediate

action is crucial, necessitating urgent publication of review findings and government response.



I stand ready to collaborate with the LRC and NSW Government to expedite this process for meaningful change and to save innocent lives.

Expansion and improvement of victim rights and support services, including access to counselling and legal and financial assistance, are imperative, especially in regional areas where services are lacking. This approach should be expedited by the appointment and empowerment of an Independent Victims Commissioner.

7. Recommended: Australian Road Fatality Reporting (ARFR).

Drawing inspiration from proven safety practices in workplaces and aviation. I propose that NSW introduce complete, transparent, and nationally shared public reporting of road deaths. There is a need for a more comprehensive approach to investigating road deaths beyond the current focus on crash scene investigations and criminal proceedings. The proposed report would include in-depth analyses of incidents, causes, road conditions, and contributory factors, promoting transparency and collective commitment to road safety. This data and reporting will be shared nationally to inform road safety and funding effectiveness across Australia. Individual names can be redacted, not learnings.

8. Recommendation: Expansion of NSW Compulsory Third Party Insurance program to assist community road safety.

The current CTP system is inadequate, out of date, and lacks compassion and fairness for individuals enduring the trauma of road crime. Therefore, I propose a comprehensive review of existing support mechanisms for all victims of road crime. I call upon the Law Reform Commission (LRC) to recommend a thorough assessment by the State Insurance Regulatory Authority (SIRA) to enact meaningful change.

1. Simplifying, Transparent, and Consistent CTP Claims Process: Streamline the claims process to ensure clarity, transparency, and consistency for all claimants.
2. Early Intervention/Best Treatment: Prioritize early intervention and access to optimal treatment to facilitate timely help for victims.

3. Service Level Agreements: Establish clear service level agreements to guarantee prompt and efficient delivery of support services to claimants.
4. Reporting: Implement standardised reporting procedures to capture essential data accurately and comprehensively.
5. Administrative Burden: Minimize administrative burdens on claimants by simplifying paperwork and procedures.
6. Language and Concept of Injury: Utilise language and concepts that claimants easily understand, ensuring they comprehend their rights and entitlements.
7. Scope of Cover Afforded: Expand the scope of cover to encompass a broader range of injuries and circumstances, ensuring comprehensive protection for all victims.
8. Children and Minors: Develop specific provisions to safeguard the rights and interests of children and minors involved in road crime incidents.
9. Contributory Negligence: Reevaluate the application of contributory negligence principles to ensure fair and just outcomes for claimants.
10. Privacy: Strengthen privacy protections to safeguard claimants' sensitive information and prevent unauthorised disclosure.
11. Statutory Benefits and Damages for Non-Economic Loss: Review and update statutory benefits and damages to adequately compensate victims for non-economic losses such as pain and suffering.
12. Supporting the Judicial Process: Enhance support mechanisms to assist claimants throughout the judicial process, ensuring they receive fair and equitable treatment.
13. Providing insurance provisions relative to driver experience and engine/power/vehicle type.

Implementing these recommendations can significantly improve the CTP scheme without imposing increased premiums on policyholders. The

well-being and rights of all victims affected by road crime must be prioritised over the rehabilitation of offenders.

9. Recommendation: Dangerous Drivers Register (DDR).

I recommend that all drivers convicted in the past ten years of any road crime that resulted in death have this on their criminal record for their lifetime, regardless of their age at the time of the crime.

The new legislation requires all dangerous drivers to be retrospectively added to a **Dangerous Driver Register (DDR)** so that potential recidivists in the current system and those driving on the roads are flagged.

Inclusion in a Dangerous Driver Register (DDR) will enable the Government and Law Enforcement Agencies to track and monitor repeat offenders' behaviour on the roads. This data will be shared between the Australian states and territories and made available to all government agencies hiring people who are required to drive responsibly on the public network.

10. Recommendation: Compulsory Driver Rehabilitation Program (CDRP).

Australia's first **Compulsory Driver Rehabilitation Program (CDRP)** will form the foundation for a new approach to road crime that enables offenders to return to driving confidently and with the skills, knowledge, and attitude to be safe as outlined throughout this document.

The CDRP will also engage with best practice principles to ensure the community has faith in a safe system and is aligned with the target of zero avoidable deaths on our roads.

'New normal' in 2025 will be far more tech-driven in every aspect of our society and technology solutions need to form strong components of compliance of the CDRP for absolute transparency.

About Duncan Wakes-Miller

I have written this document with the support and input of my wife Bella. My knowledge of road safety and road crime legislation is shaped by personal tragedy:

Witnessing the impact of road trauma drives our dedication. My approach to writing this submission is founded on evidence-based research and lived experience. I focus on pragmatic, specific, measurable, achievable, and relevant actions to save lives—radical common sense. My wife Bella has supported me every step of the way for which I am profoundly grateful.

I've cultivated an understanding of road safety principles, contributing to projects to reduce fatalities and injuries. Invited to join the NSW Road Safety Advisory Council and present to the NSW Parliamentary Stay Safe Committee in 2023, I participated in the NSW Road Safety Forum in 2024. With Bella, as Founding Members of The Road Trauma Support Group NSW (RTSGNSW), I have collaborated with key stakeholders, including Transport for NSW's Centre for Road Safety, NSW Police, the State Insurance Regulatory Authority (SIRA) and The Quest for Life Foundation.

I am proud to have conceived, scoped, and briefed the incredible team at Fiftyfive5 Accenture on the research project "The Unheard Trauma of Fatal Road Crimes in NSW," awarded for excellence by the Research Society.

I am proud to stand shoulder to shoulder with other individuals and families impacted by road trauma and provide peer-to-peer support. Collaborating with empathy and strategy to assist in developing road trauma support services through the Road Trauma Support Group NSW.

I'm immensely grateful for the unwavering support of my family, friends, and the broader community impacted by road trauma. Their resilience and

solidarity have been a source of strength throughout this journey. You know who you are.

I hope my skill in navigating and wandering lost in emotional landscapes helps to give my recommendations authenticity. I have attempted to communicate effectively, blending empathy with strategy, ensuring that the initiatives outlined in this document resonate and remain technically sound so that they can be implemented.

Some of the recommendations are built on discussions with members of the Road Trauma Support Group NSW and so there will be some overlap with the RTSG LRC submission. However the content of this submission reflects our views as parents and our additional ideas. If I have made any errors or offended or incorrectly characterised any individuals or organisations in writing this document, please accept my sincere apologies. I am not a legal or law enforcement expert; I only intend to 'call it as I see it' so we can reduce unnecessary deaths or serious injuries. All the opinions in this document are ours, and we accept responsibility for them. Any errors are mine alone.

The challenge is achieving and sustaining significant trauma reductions to meet national targets of zero road deaths and serious injuries by 2050 in Australia. This necessitates a clear understanding and planning for a zero-harm road transport system, including crash causation analysis, preventative solutions, community-backed implementation, and new legislation. I hope you agree; if not us, then who and when?