

NSW Law Reform Commission review of Serious Road Crime

Youth Justice NSW notes that the NSW Law Reform Commission has received a reference from the Attorney-General to consider whether existing provisions of the *Crimes Act 1900 (NSW)* dealing with serious road and dangerous driving offences remain fit for purpose, including with respect to the maximum sentences and sentencing principles, whilst also considering the experiences of victims and their families (**Tab A**).

In reviewing the legislation relating to serious road crime, Youth Justice NSW asks that the Law Reform Commission consider the potential impact of legislative reform particularly on children and young people.

The Data

Review of Youth Justice NSW's last five years of data relating to admissions into custody of young people aged 10-17 years indicates:

- An increase in the numbers of admissions to custody for serious road crimes from 2018-2022 being from 121 in 2018 to 215 in 2022.
- Aboriginal young people have made up more than half of the admissions for serious crimes most years over the last five-year period. For example, in 2018 young Aboriginal people made up 63% of admissions. In 2021 and 2022 young Aboriginal people made up 60% and 61% of the admissions respectively.
- The overwhelming majority of the admissions for serious road crimes were for dangerous or negligent operation (driving) of a vehicle – for example, in 2022 there were 215 admissions into custody for a serious road crime with 213 admissions for dangerous or negligent operation of a vehicle.

Bureau of Crime Statistics and Research (BOCSAR) data indicates:

- Driving offences are the fourth most common offence for young people proceeded against by the police over a ten-year period
- The rate of (all types of) proceedings against young people over a ten-year period is highest in regional and remote parts of NSW (see: https://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Young-people.aspx)
- For the period July 2021 to June 2022 there were 399 finalised charges against young people for serious road crime. Of those finalised charges 169 identified as Aboriginal, 165 as non-Aboriginal and 65 unknown.
- Of the proven court appearances, in 2021/22, where the principal offence related to serious road crime, 6% of all young people received a custodial sentence, with Aboriginal young people almost seven (7) times more likely to receive a custodial sentence (20% of Aboriginal young people received a custodial sentence compared to 3% of non-Aboriginal young people).

Consequences

Serious children's indictable offences include the serious road crimes for which the maximum penalty is 25 years or which result in the death of the victim and are dealt with by the District Court.

The Children's Court deals with traffic offences where the defendant is not old enough to hold a driver's licence or permit (under 16), or where the Children's Court is dealing with other related criminal offences. All other traffic offences alleged to have been committed by persons under the age of 18 years are currently dealt with in the Local Court.

Strictly indictable offences, homicide and **traffic** and related offences if the young person is aged 16 years or more are excluded from diversion to Youth Justice Conference under the *Young Offenders Act 1997 (NSW)*.

Consequently, in the absence of amendments to the jurisdiction of the Children's Court, proceedings against young people for serious road crime will be heard in the Local and District Courts

More serious penalties for serious road crime are likely to result in the increase in numbers of custodial sentences for young people; and potentially more Aboriginal young people.

Youth detention is closely associated with incarceration later in life as an adult, in addition to other negative welfare outcomes, so avoiding control orders for young people can positively change the life trajectory of a young person.

Accordingly, if penalties for serious road crime were to be increased Youth Justice NSW would support expansion of the jurisdiction of the Children's Court to include additional road crimes so that these matters can be dealt with by specialist children's magistrates and consistently with other criminal offences committed by children and young people.

Closing the Gap Target 11

In addition, increasing the severity of sentences for children who are guilty of serious road crime will have a negative impact on progress towards Target 11 of the NSW Closing the Gap Implementation Plan 2022 - 2024. The National Agreement on Closing the Gap has 17 socio-economic targets including Target 11, '**Reduce the rate of Aboriginal young people in detention**'.

Youth Justice NSW and the Aboriginal Legal Service co-chair a working group that is developing a suite of work focussed on making greater progress under Target 11. Continuing to exclude road and traffic offences from the Children's Court, increasing the severity of the sentences or limiting judicial discretion with respect to sentencing is likely to have a significant impact both on the incarceration of Aboriginal young people which will undermine progress made to date and potential future progress under Target 11, in addition to its other known social welfare impacts.

Alternatives

There is evidence that early intervention with place-based responses to youth involved in serious road crime are reducing the rates of young people being admitted to custody.

Attachments

Tab	Title
A	NSWAG's reference to the NSW Law Reform Commission – 10 November 2022
B	NSWLRC's list of serious road crime offences

Approval

Role	Electronic approval by	Date
Director, Strategy and Engagement		17/2/2023
A/Executive Director, Youth Justice NSW		17/2/2023

Serious Road Crime – Consultation Paper – December 2023

NSW Law Reform Commission received a reference from the Attorney-General to consider whether existing provisions of the Crimes Act 1900 (NSW) dealing with serious road and dangerous driving offences remain fit for purpose, including with respect to the maximum sentences and sentencing principles, whilst also considering the experiences of victims and their families.

YJNSW made a preliminary submission to the Law Reform Commission in February 2023, a copy of which is attached (**Tab A**). Youth Justice NSW (YJNSW) requested that the Law Reform Commission consider the potential impact of legislative reform on children and young people. YJNSW and Bureau of Crime Statistics and Research (BOCSAR) data indicates that changes to sentencing for serious road crimes are likely to disproportionately impact Aboriginal children and people in regional and remote parts of NSW.

The Law Reform Commission issued a Consultation Paper in December 2023, seeking further submissions from stakeholders.

YJNSW provides the following feedback on the issues raised in the Consultation Paper:

#	Page/section reference	Question / Issue	Youth Justice NSW Feedback
Q5.1	Section 5, p99	1) Should any serious road crime offences in the <i>Crimes Act 1900</i> (NSW) that are currently listed in Table 1 and Table 2 of schedule 1 of the <i>Criminal Procedure Act 1986</i> (NSW) be made strictly indictable?	1) Serious road crime offences should not be made strictly indictable if the consequence is that they are no longer able to be heard by the Children’s Court. The Children’s Court has the discretion to commit a case to a higher court where it is not appropriate for it to be dealt with summarily by the Children’s Court. All serious road crime offences in the Crimes Act (except for manslaughter) should continue to be dealt

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		2) Should the offence of negligent driving occasioning death (<i>Road Transport Act 2013</i> (NSW) s 117(1)(a)) be made indictable or strictly indictable?	<p>with in the Children’s Court despite its jurisdictional limits for custodial penalties. It is widely accepted that increased sentencing has not been shown to have a deterrent effect on young people (<i>Caesaroni c., Bala N., (2014)</i>)</p> <p>2) Negligent driving occasioning death could be made indictable (not strictly indictable) to allow for flexibility dependant on the circumstances of the case.</p>
Q5.2	Section 5, p104	Should the dangerous driving offences in s 52A of the <i>Crimes Act 1900</i> (NSW) be added to the definition of “serious children’s indictable offence” in section 3 of the <i>Children (Criminal Proceedings) Act 1987</i> (NSW)? If so, what offence should be added?	<p>No. Higher sentences do not have a deterrent effect on young people given their stage of development in terms of consequential thinking, impulse control, risk taking etc. This amendment is likely to impact disproportionately on Aboriginal children and young people in regional and remote areas which will increase overrepresentation of Aboriginal children and young people in Youth Justice Centres. Other place-based co-designed responses are likely to be more effective in reducing criminogenic risk for children and young people.</p>
Q6.2	Section 6. p121	1) Should restorative justice be made widely available for serious road crime offences? If so, at what stage in the criminal justice process should restorative justice be available?	<p>1. Restorative justice is currently available for some serious road crime offences through Youth Justice Conferencing available pursuant to the <i>Young Offenders Act 1987</i>. If restorative justice was to be made more widely available for serious road crime offences it is recommended that:</p> <ol style="list-style-type: none"> a. Traffic offences that do not result in death should be eligible for a youth justice conference (currently ineligible if the young

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		<p>2) If restorative justice was to be made available for serious road crime offence pre-sentence, should a young person's participation be taken into account in sentencing?</p> <p>3) Should restorative justice processes for serious road crimes be supported by legislation? If so, what legislative</p>	<p>person is old enough to get their Learners Permit).</p> <p>b. A serious indictable offence, particularly one that results in death, should have access to a voluntary restorative justice process, either pre or post sentence. Restorative justice processes, as outlined in the discussion paper, can have significant benefits for both victims and the young person that the standard criminal justice processes cannot address.</p> <p>2. A young person's participation should not have a significant impact on sentencing, but could be taken into consideration in particular circumstances.</p> <p>a. Firstly, the young person must enter into the process voluntarily and with appropriate intentions. If a young person entered into the process with the intention of reducing their sentence, this is not an appropriate motivation for participation.</p> <p>b. Secondly, the restorative justice process should assess or review a young person's readiness for participation. If the young person was assessed as not yet ready, this should not negatively impact sentencing.</p> <p>c. Thirdly, a victim may not be ready for a restorative justice process prior to sentencing (particularly in a matter resulting in death). It may be more appropriate to hold a restorative justice process as guided by the readiness of both the victim and the young person.</p>
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		<p>safeguards and processes would be appropriate?</p>	<p>3. Yes. Legislation provides a framework for the process and outlines a victim’s and young person’s rights in the process, particularly if it is included in any aspect of sentencing determination.</p> <p>The legislation should include the timeframe for the process, requirement to inform both victims and young people of the process, clarity regarding the rights of participants (including that it is a voluntary process and must include clear informed consent processes), clarity regarding legal and civil proceedings if anything is disclosed in the process, and the right to professional support for both victims and young people.</p> <p>The latter is particularly important where a victim or the young person may have disability, speak English as a second language, have mental health needs, etc and will need additional support to participate in the process.</p>
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Attachments	
A	YNSW Preliminary Submission

Approvals		
Role	Electronic approval by	Date
Director, Strategy & Engagement		05.04.2024
Executive Director, Youth Justice NSW		07.04.2024