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A friend to a member of the Road Trauma Support Group NSW

Submission to:

Serious Road Crime Consultation Paper 23,

NSW Law Reform Commission

5<sup>th</sup> APRIL 2024

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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Laws and sentences are outdated and ineffective.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-centred 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.

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.

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## 1. Introduction

I have been a friend of a member of the Road Trauma Support Group NSW (RTSG) for 6 Months. 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 centred 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.

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### **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.

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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.

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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 licencing 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).<sup>2</sup>

### **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

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<sup>1</sup> NSW Sentencing Council, *Repeat traffic offender report* (September 2020)

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

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The *R v Whyte* guideline judgment<sup>3</sup> 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.

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<sup>3</sup> *R v Whyte* [2002] NSWCCA 343; 55 NSWLR 252

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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.

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## 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.