

The Hon Tom Bathurst AC KC
Chairperson
NSW Law Reform Commission
Selborne Chambers
Level 6, 174 Philip Street
SYDNEY NSW 2000

Re: NSW Law Reform Commission Serious Road Crime

26 April 2024

Dear Chairperson

Thank you for the opportunity to make a submission on the consultation paper for the NSW Law Reform Commission's (LRC) review of serious road crime.

Sadly in 2023, NSW experienced the tragic loss of 351 lives on NSW roads. The NSW Government continues to work towards its target of halving deaths and reducing serious injuries by 30 per cent by 2030. This is through the delivery of proven initiatives in the 2026 Road Safety Action Plan reflective of the Safe System approach to road safety, alongside delivery of ongoing programs and policy review.

In February 2024, the NSW Government hosted a Road Safety Forum which brought together national and international experts, road safety stakeholders and key agencies to discuss trauma trends, research and opportunities for new and enhanced measures to tackle the ongoing challenge of deaths on our roads. The forum had a focus on regional road fatalities, speeding, young driver attitudes and operational policing perspectives. The NSW Government is actioning a number of initiatives from the Forum, to be delivered alongside the 2026 Road Safety Action Plan.

Transport for NSW (Transport) notes the LRC's focus on serious road crimes under the *Crimes Act 1900* and accessorial liability offences, and that the paper's focus is not on offences under the *Road Transport Act 2013* (RTA). Accordingly, Transport's feedback on the consultation paper is limited to areas that directly relate to road safety evidence and outcomes, and the legislation that Transport is responsible for.

Transport makes the following points (with reference to the paper's section numbering):

2. Offences

Question 2.1: Vehicular manslaughter

The consultation paper asks if NSW should have a new offence of 'vehicular manslaughter/homicide' and if so, what the elements and maximum penalty of any new offence should be.

Transport agrees with concerns from stakeholders that there is a gap in available offences or sentencing options within the current hierarchy of offences for driving that causes death. Transport supports a comprehensive framework to ensure culpable drivers do not avoid punishment as well as ensuring courts have sufficient flexibility in sentencing to deter further offending. This includes scope to effectively prosecute the variety of circumstances that may give rise to a conviction for driving that causes death and applying appropriate penalties that reflect the severity of the offence. For example, Transport notes that the maximum sentence for manslaughter is 25 years and the

alternative charge of aggravated dangerous driving causing death carries a notably lower maximum penalty of 14 years (10 years for a non-aggravated offence).

Question 2.3: Circumstances of aggravation for dangerous driving

The consultation paper asks whether the circumstances of aggravation related to speeding in s 52A(7)(b) of the *Crimes Act 1900* should be amended and if so, what the threshold should be.

Speeding is the single most significant contributor to road fatalities worldwide. Research consistently demonstrates the relationship between speed, crash frequency and severity – the faster a driver travels, the more likely they are to crash and the greater the risk of serious injury or death to themselves and others.

Transport supports reducing the current threshold for speeding as a circumstance of aggravation from exceeding the speed limit by more than 45km/h, to exceeding the speed limit by more than 30km/h but not more than 45km/h. This threshold limit is consistent with the second highest band used for other speeding offences. Speeding by more than 30km/h over the speed limit is considered a serious offence under road transport legislation and is the threshold for automatic licence sanctions to apply (three months minimum). Transport will need to consider in more detail the impacts of such a change on parity with other speeding offences and penalties.

The LRC also asks whether the threshold for the circumstance of aggravation relating to an accused being under the influence of a drug (s 52A(7)(d) of the *Crimes Act 1900*) be amended from “very substantially impaired” to “substantially impaired”. One preliminary submission suggested the existing term is confusing and may make this circumstance unnecessarily hard to prove.

A blood/breath alcohol concentration of 0.15, which is equivalent to high range drink driving, is a circumstance of aggravation in s 52A (7)(a) of the *Crimes Act 1900*. Following NSW drink and drug driving reforms in 2018, driving under the influence (DUI) penalties were increased to match those for high range drink driving. The DUI offence in the RTA requires the accused to be ‘under the influence’ and is established through blood/urine testing following a failed sobriety assessment administered by Police.. Noting the parity between high range drink driving and DUI offences under the RTA, Transport recommends reviewing the term ‘very substantially impaired’ in the *Crimes Act 1900*, suggesting ‘substantially impaired’ may better align with the RTA’s DUI provisions.

3. Penalties

Transport agrees that it is important that the courts have the flexibility to apply appropriate sentences that reflect the seriousness of road crime and its impact on families and the NSW community, and which serve to deter and sanction culpable driver behaviour.

Research supports that increased consequences for increasing degrees of offending (for example escalating penalties for speeding), may improve deterrence among the general population of drivers if the perceived likelihood of being caught is high and if penalties are swiftly applied. However, the research on increased penalties for serious and repeat offenders is less clear and may not have the intended deterrent effects on these types of offenders.

Question 3.4: Default and minimum licence disqualification periods

Research indicates administrative licence disqualification applied as part of a demerit point system is effective, particularly for drivers approaching zero points and at risk of losing their licence. The effectiveness of licence disqualification for more serious and repeat offenders is less clear and suggests these offenders may be more likely to continue to drive while disqualified or unlicensed.

As noted by the LRC, the NSW Government implemented reforms in 2017, which aimed to encourage lawful driving by introducing shorter default and minimum disqualification periods, while expanding roadside sanctions for repeat disqualified driving offenders. Prior lengthy disqualification periods offered little incentive for compliance. Early analysis in 2018 by the Bureau of Crime Statistics and Research indicated these reforms did not compromise road safety.

Transport is not aware of any available research evidence which shows positive effects of longer disqualification periods on reoffending and longer-term trauma outcomes.

6. The experience and rights of victims

Question 6.1: Existing rights, victim impact statement and support schemes

Considering the experiences of victims of serious road crime is consistent with a safe system approach to road safety, particularly identifying and implementing measures to improve post-crash outcomes as well as deterring unsafe behaviour.

Transport notes the Department of Communities and Justice is undertaking a review of the *Victims Rights and Support Act 2013*, which includes consideration of the current Victims Support Scheme (VSS). Transport understands that currently the definition of 'motor accident' excludes the majority of victims of serious road crime from receiving support offered under the Act.

There may be benefit in the NSW Government undertaking a broader, holistic review of other road trauma support options available, including trauma support services provided through the State Insurance Regulatory Authority (SIRA) and the NSW Road Trauma Support Group to aid in determining whether there are any gaps in support for road trauma victims and identifying mechanisms for support.

Question 6.2: Restorative justice

Transport supports evidence-based measures to reduce road trauma and traffic reoffending. Transport understands that juvenile diversion and restorative justice programs are a feature of broader youth justice approaches across a number of Australian jurisdictions, including NSW. Research indicates that with appropriate targeting and program settings, early intervention can have positive outcomes for children and young people by diverting them from the criminal justice system. Transport welcomes more detailed consideration by the LRC of the research in relation to effective restorative justice approaches and any opportunity to better target road crime offending as part of the youth justice framework.

If you require further information on Transport's feedback on the consultation paper or other information to assist in the next phases of the review, please contact

Yours sincerely

Josh Murray
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Transport for NSW

OFFICIAL

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