

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

Re: NSW Law Reform Commission on Serious Road Crime

February 2023

Dear Chairperson,

Thank you for the opportunity to make a preliminary submission to the NSW Law Reform Commission's review of serious road crime.

Someone is killed or hospitalised every 46 minutes because of a crash on NSW roads. In 2021, 275 people were killed and 10,412 were seriously injured while using our roads in NSW. Trauma from NSW road crashes cost the community over \$9 billion each year, in addition to the personal and far-reaching effect that it has on families, friends, first responders and the broader NSW community.

The NSW Government, through the 2026 Road Safety Action Plan (the Plan), is working towards halving deaths and reducing serious injuries by 30% from 2018-2020 levels by 2030, and a long-term target of zero fatalities and serious injuries on our roads by 2050. The Plan is based on the internationally proven Safe System approach to road safety, delivered by initiatives that lead to safer roads, speeds, people and vehicles, the four key elements of the Safe System approach. Deterring unsafe driver behaviour is critical to achieving these targets. The Plan was announced in April 2022, and includes a range of evidence-based actions, as well as commitment to ongoing programs and policy review.

While this review focuses on serious road crime, particularly the offence framework where the actions of an offender result in death or serious harm to another person, it is important to consider serious road crime within the broader context of all offences committed on NSW roads and road-related areas and as a proportion of all road trauma, and the interventions that may apply to improve safety.

Education combined with enforcement and penalties, including fines, demerit points and licence sanctions, all aim to motivate road users to comply with the applicable driving laws and behave safely on and around the road. Enforcement consists of a range of measures, including camera-based approaches and police presence on the road network. These measures continue to form part of the NSW approach to road safety

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and in conjunction can contribute to deterrence of unsafe behaviour and support long-term reductions in road trauma in NSW.

Additionally, in November 2022, the NSW Government announced a parliamentary inquiry examining whether the *Road Transport Act 2013* could be improved, particularly to manage unsafe drivers. While terms of reference for this inquiry have not yet been established, this will likely complement the Law Reform Commission's review of serious road crime.

Transport for NSW (TfNSW) is supportive of all evidence-based measures that are likely to improve safety on NSW roads, and the review as scoped. Comments on the specific terms of reference, including evidence and information held by TfNSW that may be relevant to the Commission, are included below.

1. Whether 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 remain fit for purpose.

TfNSW supports the review of *Crimes Act 1900* offences and provisions, including those offences outlined in the Law Reform Commission *Background Note: What are 'serious road crime' offences?* The consideration of whether these remain fit for purpose should be informed by how they contribute to deterrence, address recidivism and contribute to long-term reductions in road trauma.

While the most serious crimes involving motor vehicle use are captured in the *Crimes Act 1900* and this represents the clear focus of the review, TfNSW also supports key major offences in the *Road Transport Act 2013* (as outlined in the Background Note) being considered by the Commission.

Drivers involved in crashes that result in death or injury to other people may be charged and convicted of major offences under the *Road Transport Act 2013* (in particular, high-risk offences that carry custodial sentences or apply in circumstances involving death or injury), or the *Crimes Act 1900*. Offences in both Acts, considered together, provide a more complete picture of current offences, and may highlight potential gaps and areas for reform.

As the custodian of a range of data relating to road trauma, and the agency responsible for administering driver licensing, TfNSW is able to support the review process through the provision of data analysis and insights. This includes bespoke analysis tailored to the Commission's needs, which may help to inform whether the offences and provisions are fit for purpose.

NSW has some of the highest quality information on road crashes in the world. This is achieved through strong partnerships between agencies and ongoing data enhancements to help us better respond to what is contributing to road trauma.

Reports from Police contain the most reliable and complete information available on the details and circumstances of a crash. TfNSW has augmented the Police reports with ongoing data linkages between the Centre for Road Safety crash data, NSW Health records, State Insurance Regulatory Authority, Compulsory Third Party claim data and iCare Lifetime Care) participant records in order to improve the road safety decision-making process by providing a more detailed and timelier picture of the outcomes of road traffic crashes particularly in relation to injury severity. There is also detailed data available from the Australian Road Assessment Program on the safety features of roads and key vehicle safety features in the NSW fleet, which is used to implement a Safe Systems approach to crash analysis.

TfNSW is able to provide data on passenger involvement in crashes where it is reported by Police. This may be of relevance to the Law Reform Commission's considerations of accessorial liability. In multi-vehicle crashes, while the crash data does not specifically denote a driver at fault, TfNSW can also specify whether the driver or rider killed was the controller of the key vehicle which performed the key contributing manoeuvre in the crash.

TfNSW can provide profiles on cohorts of offenders for specific types of offences as well as the risk of offenders being involved in crashes. This may supplement information available in relation to crash investigation or sentencing from other NSW Government agencies and assist the Commission in forming a view of the offender cohort associated with serious road offences and whether the offences remain appropriate. Depending on the outcomes sought, TfNSW can provide advice to the Commission on data sets and analysis which may be available and appropriate to support the review.

2. Whether the maximum sentences available for serious road crimes remain appropriate.

TfNSW supports the Commission examining maximum sentences available for serious road crimes as part of the review, including any available evidence on the effect of different periods on deterrence and improving long-term trauma outcomes. It is important that the Court has 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.

3. Relevant sentencing principles in statute and the common law for serious road crimes.

TfNSW is supportive of the Commission examining this as part of the review. As stated above, TfNSW is supportive of sentences reflecting the seriousness of the road crime and its impact on the community. This may include consideration of whether road crime is dealt with, in terms of both sentencing principles and outcomes, in a comparable manner to non-driving related culpable behaviour that results in death or serious injury.

Deterrence through strong enforcement and penalties, combined with public education, is known to be broadly effective in changing the behaviour of most drivers. Depending on the offence and the circumstances under which it was committed, there are a range of existing interventions which an offender may be subject to.

However, some people are unreceptive to mainstream deterrence measures and continue to drive recklessly. TfNSW would be interested in an exploration of how the sentencing for serious road crimes may work in conjunction with other interventions and measures, including Victim Impact Panels, and potentially contribute to further reductions in road trauma.

TfNSW would also support an examination of offences involving a vehicle and causing death or serious injury and what types of sentences these offences typically incur, and how these sentences compare to sentences given in cases where death or serious injury result from the use of weapons or other implements. This is an issue which has been raised by the Road Trauma Support Group NSW.

4. The experiences and rights of victims of serious road crime and their families within the criminal justice system.

As noted above, road trauma has wide-ranging impacts on victims of serious road crime and their families and the community. Understanding the experiences of victims of serious road crime is consistent with a safe

system approach to road safety, to identifying and implementing measures to improve post-crash outcomes, as well as deterring unsafe behaviour.

In the 2026 Road Safety Action Plan, the NSW government provides a commitment to support the Road Trauma Support Group NSW to provide practical help and connection to existing services for those who have been impacted by road trauma.

As part of this commitment, TfNSW provides funding to the Road Trauma Support Group NSW to facilitate ongoing counselling services, a 24-hour telephone service, information for legal, police and insurance matters and the delivery of educational programs to the NSW community.

The impact of road trauma is also experienced by the families and friends of drivers who have acted criminally and caused or contributed to the death or serious injury of themselves (in a single vehicle, single occupant crash) or to another person. While this experience may be distinctly different to the family of a person killed or injured by a driver who has committed the serious offence, it is still a profound and often life-changing experience of the crash investigation and criminal justice system after a crash.

5. Any other matter the Commission considers relevant.

There are a number of key new measures that TfNSW is leading, as part of the NSW Government's 2026 Road Safety Action Plan to reduce trauma, which may be relevant context for this review and/or the planned Parliamentary inquiry into the *Road Transport Act 2013*. The 2026 Road Safety Action Plan includes commitments to:

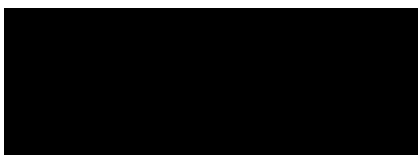
- Implement new and enhanced education programs for drink and drug driving offenders, to reduce reoffending.
- Develop a trial, targeted education program to address risk taking by the small group of high-risk, repeat offenders who are outside the scope of current behavioural road safety initiatives.
- Enhance post-crash drug and alcohol testing so that requirements extend to drivers that are involved in crashes that cause grievous bodily harm, not only fatal crashes. This is expected to assist in the investigation of crashes and enhance the evidence available to support appropriate charges for serious offences.
- Investigate and, if feasible, trial an offender Intelligent Speed Assist (ISA) program. The ISA system provides visual and auditory feedback to the driver if the vehicle exceeds the speed limit. TfNSW will explore the offender cohort this may be applicable to and the mechanisms by which they may be identified and required to participate.
- Support wider scale rollout of alcohol interlocks and/or other technologies (such as passive alcohol sensors) that prevent drink-driving.

Most of these actions respond to recommendations of the NSW Sentencing Council Review of Repeat Traffic Offenders. They build on TfNSW's ongoing responsibilities to deliver road safety policy and programs and to administer driver licensing, including education requirements and testing of those returning to licensing after committing a serious road crime offence.



If you require further information on the TfNSW preliminary submission or data or other information to assist in the next phases of consultation, please contact [REDACTED]

Sincerely,



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