

17 February 2023

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

By Email: nsw-lr@justice.nsw.gov.au

Dear Commissioner

NSW Law Reform Commission Review of Serious Road Crime

Thank you for the opportunity to make a preliminary submission to the NSW Law Reform Commission's (**'the Commission'**) review of Serious Road Crime.

Possible scope of the review

In announcing this review, the Attorney General specifically acknowledged extensive feedback from "families of victims who had been killed as a result of road crime", and the trauma caused by "road crime deaths".¹ The Terms of Reference (ToR) to the NSW Law Reform Commission specifically identify:

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.

In its Background Note, the Commission has identified a number of serious road offences under the *Crimes Act 1900* (NSW), including offences of manslaughter, dangerous driving or failing to assist following a crash where death or grievous bodily harm are caused. We acknowledge that these offences are serious, reflected in maximum penalties between 7- and 25-years' imprisonment. These offences are either strictly indictable, or Table 1 offences, and fall squarely within the ToR.

However, the Commission has also identified other driving offences, where neither death nor grievous bodily harm are occasioned, including:

- predatory driving (s.51A, Table 1 offence)
- police pursuit (s.51B, Table 2 offence)

¹ Attorney General's Media Release, 'Review of Serious Road Crime' (11 November 2022): [Review of serious road crimes | NSW Government](#)



- causing actual bodily harm while in charge of vehicle while driving wanton/furious/racing/other misconduct or wilful neglect (s.53, a summary offence).

The Commission has further identified a range of drink-driving, 'under the influence' of illicit drugs or alcohol offences, negligent driving causing death or grievous bodily harm, and presence of illicit substance in oral fluid/blood/urine. These are summary offences under the *Road Transport Act*. Some of these offences are punishable by fine only.

Comment

Legal Aid NSW acknowledges the profound impact that serious road crime, which results in catastrophic outcomes, can have on victims and families, and the public interest in road-related deaths, such as the recent prosecution of, and appeal by, Samuel Davidson.²

We are concerned that expansion of the review to encompass offences under the *Road Transport Act 2013* ('**Road Transport Act**') has the capacity to overwhelm and/detract from the more serious offending and issues that prompted this referral.

On the one hand, a thorough review of all road offences set out in the Background note could inform future legislative direction – particularly around the efficacy and appropriateness of continued increases in criminal penalties for summary drink and drug driving offences.

However, given the *significantly* greater number of prosecutions for summary road offences annually (relative to serious road crime resulting in death or grievous bodily harm) the scope of consultation required on a broader approach is likely to be extensive.

We anticipate a vast range of policy issues would arise in response to such wide review (for example, fundamental questions such as the rationale and evidence base for criminalisation of the presence of illicit drugs in blood; the financial impacts of the Interlock scheme; lack of available drug and alcohol rehabilitation services in regional and rural communities). This has the capacity to diminish focus on the more serious crimes that prompted this review.

We note that there have also been a number of amendments to the *Road Transport Act* since its introduction in 2013, as well as ongoing policy initiatives addressing (and reviewing) drug and alcohol related road crime and penalties. These include the:

- **New South Wales Government Road Safety Plan 2021**, "*featuring targeted initiatives to address key trends, trauma risks and the types of crashes occurring on New South Wales roads, including drink- and drug-driving.*"³
- **The Road Transport Legislation Amendment (Road Safety) Act 2018**, which commenced on 1 July 2018 and introduced increased penalties for

² *Davidson v R* [2022] NSWCCA 153.

³ [New South Wales Government's Road Safety Plan 2021](#)

driving under the influence offences, provided new police powers to deal with suspected drug-affected drivers, and included cocaine in the police roadside drug testing regime.

- **Road Transport Legislation Amendment (Penalties and Other Sanctions) Act 2018**, the purpose of which was described by the government as “...to amend road transport legislation in order to tackle drink- and drug-driving behaviour by strengthening penalties and sanctions and enhancing enforcement. One of the objectives is to ensure penalties, including licence suspension and fines, are consistently and swiftly applied to low level prescribed of concentration of alcohol, or PCA, and drug presence first offences through licence suspension, coupled with penalty notices.”⁴
- **Transport NSW Centre for Road Safety Drink and Drug Driving Reforms, Operational review** (November 2020),⁵ **Monitoring Report** (November 2022),⁶ and the **ongoing process and outcome evaluations** planned to take place up to 2025.

Whether a broad or narrow approach is adopted, we suggest that the review should incorporate detailed analysis of the data around prosecution, conviction and appeal outcomes (noting that the case of *Davidson* is currently the subject of a Special Leave application), and an exploration of the resource impact (on policing, courts, Corrective Services/Community Corrections, behaviour change and treatment providers) of any recommended change to the law.

We also support a review of the available literature around road user behaviour, and the correlation between penalty and deterrence and/or behaviour change.

Legal Aid NSW looks forward to providing more comprehensive submissions following release of the Commission’s Consultation Paper. We are also open to meeting with the Commission to discuss the issues raised more fully.

Again, thank you for the opportunity to comment at this early stage. If you have any questions, please contact [REDACTED]

Yours sincerely

[REDACTED]

Monique Hitter

Chief Executive Officer, Legal Aid NSW

⁴ Second Reading Speech, Legislative Assembly (8 August 2018) Minister for Roads, Maritime and Freight: [Legislative Assembly Hansard - 08 August 2018 \(nsw.gov.au\)](https://www.legislation.nsw.gov.au/documents/legislation/2018/08/08/2018-08-08-roads-transport-legislation-amendment-penalties-and-other-sanctions-act-2018)

⁵ <https://roadsafety.transport.nsw.gov.au/downloads/drink-and-drug-driving-review.pdf>

⁶ <https://roadsafety.transport.nsw.gov.au/downloads/drink-drug-driving-reforms-monitoring4.pdf>