

17 February 2023

## **Preliminary Submission to the NSW Law Reform Commission Review of Serious Road Crime**

### **Introduction**

I am the mother of Timothy Proctor, a young police officer, who was killed in a car crash while on duty in February 2019. He was 29 years old, had been married for a year and a half, and had only found out two weeks before, that he was going to be a father.

The elderly woman that crossed into oncoming traffic and crashed into Tim's car at approximately 100km per hour, survived the crash but died several weeks later from a pre-existing medical condition.

The death of the driver meant our family was spared the process of court proceedings. But when I see the legal outcomes of similar road crashes, I am disappointed by almost all of the court decisions. I imagine that had the woman who killed Tim lived, it is unlikely she would have served any jail time for taking his life and leaving his widow to raise their son alone.

This submission is based on my experience and conversations with family members, friends and others who have lost family members in road crashes. I do not have any research or reports but I have lived through the trauma and see the need for change. I cannot comment on all the items in the terms of reference but I have made a few comments and suggestions for your consideration.

### **Terms of reference to be considered**

During the years since the last review, public opinion about road crashes has changed. As a society, we are now more aware of the responsibilities drivers have to other road users. What would have been considered by many to be an 'accident' years ago, is now seen as 'a foreseeable consequence of the drivers' actions' and current community expectation is that they should be held accountable for those actions. Therefore, I believe that the Committee should review all the items listed in the terms of reference.

### **Sentencing principles relevant to serious road crimes – the issues**

In my experience, the current sentencing outcomes are considerably less than community expectations. Killing a person with a car should not be treated any differently than killing a person with any other weapon. Just as any person holding a gun knows it can be used to kill, every driver knows their vehicle can be a deadly weapon. Sentences given to drivers for the crashes they cause and the lives they destroy, should reflect this.

I believe the current maximum penalties need to be increased to align with community expectations to penalize drivers who commit these crimes.

### **Sentencing principles relevant to serious road crimes – suggested solutions**

The reality is that actual custodial sentences are almost always significantly less than the maximum penalties available for the conviction and are frequently further reduced on appeal.

Just as the judges' sentences must consider the maximum custodial penalty for these crimes, I believe there are circumstances where there should also be a minimum custodial penalty.

I would like to suggest that in the course of the review, the Commission recommend a Minimum Custodial Penalty or develop a Minimum Sentence Guideline for each offence. I believe it is time to remove the option for the judges to rely on old court cases that reflect public opinion from 20 or more years ago and replace it with laws or guidelines that reflect the expectations of society today.

When the offender has taken the life of another road user (or passenger in their vehicle) and the offender is breaking the law at the time, for example: driving while their licence is suspended or speeding. There should be a minimum custodial sentence imposed.

When the offender is not breaking the law at the time of the crash, the Minimum Custodial Penalty or Minimum Sentence Guideline could be used at the judges' discretion.

The minimum custodial sentence should not be reduced by discount for a guilty plea or for remorse. With so many crashes filmed on dash cam (as it was with Tim's crash) and traffic cameras, it is hard for most people to understand how a judge will give a discount for a guilty plea when the offence has been recorded on video.

I believe that by disregarding the road laws, the offender by their actions, has ensured they will receive a minimum custodial sentence. The sentence issued by the judge should not be able to be discounted to less than the minimum custodial sentence.

### **Other matters considered relevant**

During your review, please also look at the Circumstances of Aggravation because this is another area that I believe needs to be brought into line with current community expectations.

Section 52A(7)(b) of the Crimes Act 1900, states the accused must be speeding more than 45km p/hr over the speed limit for the charges to include a circumstance of aggravation. This is regardless of what the speed limit is on the road where the crash occurred.

This means that in a residential area (50km p/hr limit) with families and children around, it must be proven the driver was driving in excess of 95km p/hr for it to be a condition of aggravation. I would suggest that that section be re-written to be a certain percentage over the legal speed limit.

Using a percentage over the legal limit instead of a set '45km p/hr' condition, would make the aggravation more relevant.

A change to say 40%, over the legal speed limit, would mean 50km p/hr areas would become a circumstance of aggravation at 70km p/hr and a 110km p/hr area would become a circumstance of aggravation at 154km p/hr.

The RTA sets safe maximum speed limits based on many factors including the width of the lane, the condition of the road and the presence of pedestrians in the area. It would seem that any driver

choosing to exceed these safe limits, by an additional say 40%, would be enough to add a circumstance of aggravation to the charge.

Thank you for the opportunity to put forward this submission and your contribution to making our roads safer.

I would be pleased to provide further information, at your request.