



Local Court
New South Wales

DEPUTY CHIEF MAGISTRATE OF NEW SOUTH WALES

17 February 2023

The Hon Tom Bathurst AC KC
Chairperson
NSW Law Reform Commission
Locked Bag 5000
Parramatta NSW 2124

By email: nsw-lrc@justice.nsw.gov.au

Dear Mr Bathurst,

Re: Submission - Law Reform Commission Review into serious road crime

On behalf of the Chief Magistrate, Judge Peter Johnstone, I **attach** my submission with respect to the Law Reform Commission's Review into serious road crime.

Yours faithfully,


Theo Tsavdaridis
Deputy Chief Magistrate
Local Court of NSW

Downing Centre Local Court
Level 4, 143 - 147 Liverpool Street, Sydney NSW 2000



Submission

Submission date:

17 February 2023

Submission Topic:

Serious Road Crime Review

Expressions called for by:

NSW Law Reform Commission

Closing date:

17 February 2023

Submission by:

Local Court of NSW

Submission:

The Local Court of NSW has been invited to provide a preliminary submission on issues relevant to the NSW Law Reform Commission's Review of serious road crime.

Using the headings outlined in the Terms of Reference, the Local Court provides the following submissions.

1. Whether the existing serious road crime provisions remain fit for purpose

Relevant law

[Section 4\(1\)](#) of the *Road Transport Act 2013* (NSW) ('RTA') defines a 'major offence' as follows:

major offence means any of the following crimes or offences—

- (a) an offence by a person (the offender), in respect of the death of or bodily harm to another person caused by or arising out of the use of a motor vehicle driven by the offender at the time of the occurrence out of which the death of or harm to the other person arose, for which the offender is convicted of—
 - (i) the crime of murder or manslaughter, or
 - (ii) an offence against section 33, 35, 53 or 54 or any other provision of the *Crimes Act 1900*,
- (b) an offence against section 51A, 51B or 52AB of the *Crimes Act 1900*,
- (c) an offence against section 110(1), (2), (3)(a) or (b), (4)(a) or (b) or (5)(a) or (b),
- (d) an offence against section 111, 112(1)(a) or (b), 117(2), 118 or 146,
- (d1) a combined alcohol and drug driving offence,
- (e) an offence against section 117(1) of driving a motor vehicle negligently (being driving occasioning death or grievous bodily harm),
- (f) an offence against clause 16(1)(b), 17 or 18 of Schedule 3,
- (g) an offence of aiding, abetting, counselling or procuring the commission of, or being an accessory before the fact to, any crime or offence referred to in paragraph (a)–(f),
- (h) any other crime or offence that, at the time it was committed, was a major offence for the purposes of this Act, the *Road Transport (General) Act 2005*, the *Road Transport (General) Act 1999* or the *Traffic Act 1909*.



[Section 206A](#) of the RTA provides that an offender who is sentenced to imprisonment for a major offence will have their disqualification period extended by the period of imprisonment served for that offence. This means, in effect, that the offender will be subject to the entire disqualification period upon release.

For ease of reference, a table of the more prevalent serious driving offences contained in the *Crimes Act 1900* (NSW) is set out below:

Section	Offence description	Penalty (Local Court and on indictment)	Strictly indictable / Table offence
18	Manslaughter	25 years' imprisonment	SI
51A	Predatory driving - while in pursuit of or travelling near another vehicle, cause or threaten impact intending to cause actual bodily harm	100 penalty units or 2 years' imprisonment [5 years on indictment]	Table 1
51B	Drive from police pursuit, not stop and drive recklessly/in manner dangerous	1st offence - 2 years' imprisonment [3 years on indictment] 2nd offence - 2 years' imprisonment [5 years on indictment]	Table 2
52A(1)	Dangerous driving occasioning death	10 years	SI
52A(3), (4)	Dangerous driving occasioning grievous bodily harm	100 penalty units or 2 years' imprisonment [7 years on indictment] [Aggravation - 11 years]	Table 1
52AB(1)	Driver of car knowingly involved in impact causing death fail to stop and give assistance necessary or within power of driver	100 penalty units or 2 years' imprisonment [10 years on indictment]	Table 1
52AB(2)	Driver of car knowingly involved in impact causing grievous bodily harm fail to stop and give assistance necessary or within power of driver	100 penalty units or 2 years' imprisonment [7 years on indictment]	Table 1
53	Injuries caused by furious riding or driving or other misconduct	100 penalty units or 2 years' imprisonment [2 years on indictment]	Table 1
54	Cause grievous bodily harm by unlawful act or omission	100 penalty units or 2 years' imprisonment [2 years on indictment]	Table 1



Local Court Disposition

It is useful to outline sentencing statistics for some of the serious driving offences which are primarily dealt with in the Local Court. In the period September 2018 to June 2022, there were 157 sentence matters involving the offence of dangerous driving (manner dangerous) occasioning grievous bodily harm ([s 52A\(3\)\(c\) Crimes Act 1900 \(NSW\)](#)), which is a Table 1 offence.

Of this number, 19 (12.1%) were finalised by way of full-time imprisonment, 74 (47.1%) were finalised by way of an Intensive Correction Order and 56 (35.7%) were finalised by way of a Community Correction Order.

During this same period, there were 460 sentence matters involving a second or subsequent offence of police pursuit ([s 51B\(1\) Crimes Act 1900 \(NSW\)](#)), which is a Table 2 offence, of which 360 (78.3%) matters were finalised by way of full-time imprisonment, 71 (15.4%) were finalised by way of an Intensive Correction Order and 26 (5.7%) were finalised by way of a Community Correction Order.

In light of these statistics, coupled with the availability of diversionary programs such as the Traffic Offenders Intervention Program ('TOIP'), it is suggested that the existing offence regime and sentencing framework is fit for purpose and provides the Court with the necessary discretion to deal with a wide range of offending conduct in accordance with the dictates of individualised justice.

It is not clear, however, what is envisaged by 'accessorial liability', referred to in the Terms of Reference, in circumstances where serious road crime offences are invariably committed by one person, namely, the driver in charge of a vehicle, and offences ancillary to a principal serious road crime offence, pertaining to a different accused, are usually referable to entirely different conduct. For example, if a passenger is involved in the concealment of an offence of vehicular manslaughter, the passenger is likely to be charged with concealing a serious indictable offence contrary to [s 316 of the Crimes Act 1900 \(NSW\)](#).

2. Maximum sentences

The Local Court submits that the penalties prescribed by Parliament for serious road crime offences is a matter for Government. The Local Court is disinclined to comment on the sufficiency of maximum penalties or any perceived need to increase maximum penalties. The Local Court is cognisant of the fact that any increase to maximum penalties is an indication that higher penalties should be imposed. So much is made clear from the decision in *R v Way* (2004) 60 NSWLR 168 at [52], wherein the Court held that: -

"Traditionally any intention on the part of the legislature that the offence should attract a heavier sentence has been manifested by an increase in the statutory maximum: *R v Sha* (1988) 38 A Crim R 334; *R v Peel* [1971] 1 NSWLR 247. The courts are expected to recognise and reflect that intention when sentencing offenders for offences after such amendments are made: *R v Slattery* (1996) 90 A Crim R 519 at 524 and *R v Jurisic* (1998) 45 NSWLR 209 at 227."

An increase, however, may represent a change in the community feeling or expectation as to the sentence appropriate for such an offence, although it should be understood that such a change will not necessarily have a wholly determinative or conclusive effect: *R v Crump* (unreported, 30/5/94, NSWCCA).

It is submitted that any consideration given to the suitability of statutory maximum penalties would benefit greater from a focus on whether or not a matter is strictly indictable.

The Local Court notes that 94.7% of Table 1 offences are finalised in the Local Court, whilst 99.7% of all Table 2 offences are finalised in the Local Court. The Local Court's jurisdictional limit of 2 years' imprisonment for a single offence, or 5 years' imprisonment for multiple offences, means that the only



practical use to which the maximum statutory penalties are put is the backdrop against which objective seriousness is assessed, in accordance with the decisions of *R v Doan* (2000) 50 NSWLR 115 and *Park v The Queen* [2021] HCA 37.

3. Relevant sentencing principles

Mitigating and aggravating factors are outlined in [s 21A](#) of the *Crimes (Sentencing Procedure) Act 1999* (NSW). The operation of these factors enables experienced judicial officers to determine an appropriate sentence in the circumstances of each case, providing for both low-level and serious offending to be dealt with appropriately.

The Local Court submits that the application of statutory sentencing provisions in the [Crimes \(Sentencing Procedure\) Act 1999 \(NSW\)](#), buttressed by principles derived from relevant caselaw from appellate jurisdictions, contain sufficient guidance to allow experienced judicial officers to determine appropriate sentences in the circumstances of each case.

These include:

- (a) The purposes of sentencing in [s 3A](#) of the *Crimes (Sentencing Procedure) Act 1999* (NSW).
- (b) The aggravating factors in [s 21A\(2\)](#) of the *Crimes (Sentencing Procedure) Act 1999* (NSW).
- (c) The mitigating factors in [s 21A\(3\)](#) of the *Crimes (Sentencing Procedure) Act 1999* (NSW).
- (d) The objective seriousness of offending conduct to be assessed against the backdrop of the statutory maximums prescribed by Parliament rather than the jurisdictional maximum applicable in the Local Court: *R v Doan* (2000) 50 NSWLR 115 (Grove J at [35]); *Park v the Queen* [2021] HCA 37 at [19]; *Markarian v the Queen* (2005) 228 CLR 357; *Veen v The Queen (No 2)* (1988) 164 CLR 465.
- (e) The guideline judgment in *R v Whyte* (2002) 55 NSWLR 252, with respect to sentencing for dangerous driving offences, which has statutory force by virtue of [Pt 3 Div 4](#) of the *Criminal Procedure Act 1986* (NSW), to be taken into account as a ‘check or sounding board’: see *Kerr v the Queen* (2016) NSWCCA 218 at [96].

4. The experiences and rights of victims of serious road crime and their families

The Local Court is reluctant to comment on the experiences and rights of victims and families of serious road crime. This is a matter for Government. It is to be noted, however, that there is a comprehensive framework of victim focused legislation designed to recognise and promote the rights of victims and through which compensation for victims of crime may be granted: See [Victims Rights and Support Act 2013](#) (NSW). More importantly, the Local Court notes that Victim Impact Statements (‘VIS’), regarding the personal, emotional or economic harm or distress suffered by a victim, may be made and considered on sentence for a variety of offences in the Local Court pursuant to [s 27\(4\)](#) of the *Crimes (Sentencing Procedure) Act 1999* (NSW). For example, [s 27\(4\)\(c\)](#) allows for the victim of a ‘dangerous driving occasioning grievous bodily harm’ offence to make a VIS during sentence proceedings.

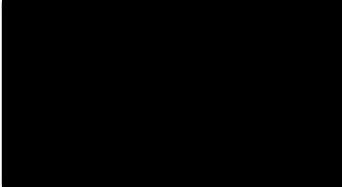
The Local Court is disinclined to support or reject any proposed extension of VISs to additional serious road crime offences. It is submitted that there is a need to consider the impact of VISs on the overall workload of the Court, given the additional time required for VISs to be read in Court and considered by the presiding magistrate, and where, for the most part, sentence remarks are delivered on an *ex tempore* basis, in a busy list, with a view to achieving finality for all parties concerned.



Local Court
New South Wales

General

Given the impact of any amendments to serious road crime legislation may have on the Local Court, the Chief Magistrate would be grateful for the opportunity to be further consulted and involved in the implementation of any amendments.



Theo Tsavdaridis

Deputy Chief Magistrate | Local Court of NSW

Downing Centre Local Court | Level 4, 143 - 147 Liverpool Street, Sydney NSW 2000

