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Submission to:

Serious Road Crime Consultation Paper 23,

NSW Law Reform Commission

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## Executive Summary

Too many people are dying as a result of serious road crime which could be avoided but which is instead rapidly increasing in New South Wales (NSW).

Laws and sentences are outdated and ineffective. Court decisions are being made based on a century-old law and even with amendments and guidance, sentencing trends are still not reflective of community expectations.

Specifically, average head sentences of approximately three years for dangerous driving occasioning death and five years for aggravated dangerous driving occasioning death are wholly inadequate, disrespectful to the value of human life, misaligned with community views and expectations.

This clearly demonstrates the need for serious reform in relation to serious road crime.

The Road Trauma Support Group NSW (RTSG) has mapped a root and branch law reform pathway and is seeking the following outcomes to be delivered promptly to avoid further avoidable loss on our roads:

- New road crimes Act
- New offence of Vehicular Homicide
- New offences and penalties hierarchy with standard non-parole periods for vehicular homicide
- Sentencing that recognises criminality associated with serious road crime and the devastating impact on families and communities
- Legislating the need to provide victim impact panels
- Embedding a better approach to victim-centred design and services

As a member of RTSG, I have been provided the opportunity to engage with the organisation's positions, and I support the recommendations provided in the RTSG submission.

I have provided a summary of the recommendations in the RTSG submission, as well as providing further details and positions on the rights and experiences of victims.

Road crime needs to be recognised by the law and judiciary for what it is – a violent and unprovoked assault on the person with a deadly weapon (a motor vehicle) with potentially catastrophic consequences, often occurring in situations where the offender has a reckless disregard for other road users as demonstrated by their blatant disrespect for road rules.

I look forward to the opportunity to contribute further during the law reform process.

## 1. Introduction

I have been a member of the Road Trauma Support Group NSW (RTSG) for 26 months. Our Vision is that no one should lose their life and no family should experience the death of a loved one through the criminal act of another road user (Road Trauma Death).

Current approaches to reducing road trauma are not working and NSW citizens are paying too high a price – death of loved ones. Road trauma death numbers in New South Wales are unacceptably high with (on average) one person dying on NSW roads every day in circumstances that should be avoidable.

The penalty regime in NSW is not reflective of the destructive and detrimental consequences road crime has on victims, their families and members of the community.

NSW is in the midst of a road crime and road trauma crisis. The consequences of this are members of the community are not protected and relevantly justice is not being afforded to the most key stakeholder in this – victims.

The existing provisions dealing with serious road and dangerous driving offences and accessorial liability provisions DO NOT remain fit for purpose.

The road trauma crisis response must be centred around root and branch law reform that educates all on vehicular responsibilities, deters criminal road behaviour, rehabilitates offenders and provides justice for victims, their families and the community. And this must be done with a sense of urgency and bipartisanship so as to address this crisis and save the avoidable loss of lives on NSW roads.

## 2. Serious road crime offences

Recommendation 1: New Law – strong action, strong message

Urgently draft and introduce new separate Road Crimes Act as the foundation for reform, to take effect no later than 2025.

To effectively reduce death and serious injury from road crime, the full hierarchy of indictable offences and penalties relating to vehicular crimes should be clearly articulated in the one Act. This legislation should encompass a range of provisions specifically tailored to handle cases involving criminal acts on the road, accessorial accountability and recidivist driving offenders.

Road crime is no ‘accident’ and I request that the term is removed. New policy and legislation must set the standard by using only the word ‘crash’ in drafting of public policy and programs, including in legal submissions, deliberations and decisions, road traffic reports and media guidelines.

**Recommendation 2a: New vehicular homicide offences**  
– to be incorporated into the new Road Crimes Act

A new offence of vehicular homicide should be created with maximum penalties that are aligned with the maximum penalties for homicide in the Crimes Act 1900.

Driving a vehicle, or being encouraged to drive a vehicle while drunk, drug-affected, tired or speeding is irrefutably a reckless indifference to other people's lives. While road deaths can be captured under existing law, a new offence of vehicular homicide contained within the new legislation would send a clear message that vehicular homicide is just as serious a crime as other forms of homicide.

**Recommendation 2b: New hierarchy of offences for serious road crime**

All road crime offences currently contained within the *Crimes Act 1900* (NSW) and the *Road Transport Act 2013* (NSW) should be reviewed to inform a new hierarchy of offences. The creation of a new instrument of law would allow for a new offence of vehicular homicide as well as a new hierarchy of offences for inclusion in the new road crimes Act, commencing with this practical and powerful first step.

There are many factors that should be considered aggravating, and the current list of factors provide too many loopholes that can result in lower sentencing. "Degree of" and "extent of" can be difficult to apply, especially when those terms do not change the outcome or finality of death and trauma. For example, exceeding the speed limit should be recognised as an aggravating factor where someone dies, because driving at 10km/hour over the limit or 45 km/hour over the limit did not change the outcome of the death.

With new serious road crime legislation as the foundation of reform, I support an evidence-based approach to drafting of all new offences, rather than trying to retrofit existing offences into the new legislation.

All road crime offences currently contained within the Crimes Act and the Road Transport Act should be reviewed to inform a new hierarchy of offences. We are particularly alarmed by drivers who continually flout traffic laws and put the lives of the public at risk. Evidence-based research commissioned by RTSG confirmed repeat offenders are six times more likely to be in a serious or fatal crash than first-time offenders. Urgent action is needed to curb repeat offending and protect the community.

**Recommendation 2c: New offences for non-drivers (Accessorial liability)** – to be included in the new Road Trauma Act.

I strongly urge the need to start imposing sentences of sufficient severity to deter passengers, drivers and the broader community from engaging in conduct that in anyway encourages or simply ignores risky and dangerous behaviour that can lead to any manner of road crime.

If someone is involved in enabling a violation of the law, they can and should be held just as responsible as the primary offender.

Implementing accessorial liability for impaired driving could revolutionise road safety efforts. By emphasising accountability and fostering responsible behaviour, we can create a cultural shift where impaired driving is no longer tolerated or excused. Just as society now views violent assault as abhorrent, we can make impaired driving equally reprehensible—a social anathema that is met with swift and severe consequences.

### 3. Penalties

Penalties currently are not in line with the prevalence and continued course of road crime committed by individuals in the community. To protect the community and combat the increase in road crime, the consequences of road crime penalties must be felt by offenders, particularly repeat offenders.

Recent sentence outcomes have been wholly inadequate and inappropriate because maximum sentences are very rarely imposed.

#### Recommendation 3a: Penalties – Vehicular Homicide – penalties to be set in parity with other crimes resulting in death

I support the creation of a new road crime Act which includes clear penalty options and standard non-parole periods. It is of utmost importance to have new sentencing guidelines that are continually improved and do not become outdated.

I support the recommendation that vehicular homicide maximum penalties mirror those of other homicide offences and include Standard Non-Parole Periods (SNPPs) for these offences.

#### Recommendation 3b: Penalties – Licence Disqualification – period to be increased and rehabilitation programs applied

Licence disqualification periods do not reflect victim and community expectations in relation to serious road crime.

I support the recommendation of an increase in default and minimum licence disqualification periods, even more so for second and subsequent offences. Recidivists should not be able to drive on our roads.

In addition to licence disqualification periods being increased, specific rehabilitation programs designed to address recurrence of the risky driving behaviour for courts to order offenders to complete. This would help to ensure the offender is fit to regain a licence. Legal duty of care must be elevated in the licencing program.

#### Recommendation 3c: Penalties – mandatory alcohol interlocks – to be enforced for all convicted drink driving offenders

Effective technology is affordable and proven effective. As a crucial step in preventing alcohol-related incidents on the roads, I advocate the inclusion in legislation of the mandatory installation of alcohol interlocks for all individuals convicted of drunk driving.

#### Recommendation 3d: Penalties for Repeat traffic offenders

– must be increased and use of technology, such as black boxes for repeat speeding offenders, expanded

I support the creation of a hierarchy of penalties for ALL repeat offenders with stronger penalties as repeat offending recurs. The most serious offenders should be facing a custodial sentence with a standard non-parole period following their second offence, as well as re-training and testing before a licence is restored to a convicted repeat offender.

## 4. Sentencing principles and procedures

There is a lack of consistency in sentencing for criminal road behaviour compared to other crimes resulting in death (e.g. minimal sentences, community service or suspended licence).<sup>1</sup>

#### Recommendation 4a: New sentencing guidelines

– that recognise that deaths and serious injuries as a result of road crime must receive sentences akin to death and serious injury in other criminal circumstances

<sup>1</sup> NSW Sentencing Council, *Repeat traffic offender report* (September 2020)

<sup>2</sup> Road Trauma Support Group NSW and FiftyFive5, *The unheard trauma of fatal road crimes in NSW* (April 2023)

The *R v Whyte* guideline judgment<sup>3</sup> for dangerous driving offences is outdated and must no longer be the guide for sentencing. As part of the drafting of a new road crimes Act, we need new sentencing guidelines that are continually improved so that guideline judgments do not become outdated.

Low sentences do little to deter criminal behaviour. I support the need for the Court of Criminal Appeal reviewing serious road crime cases to correct under-sentencing.

The approach to discounting of sentencing should be reviewed. The measurement of remorse, contrition and risk of reoffending cannot be systematically achieved yet we see repeated discounting applied.

#### Recommendation 4b: Victim Impact Panel program

– to be mandated for repeat offenders and enshrined in legislation

Victim impact panels provide a platform for victims and their families to share the personal repercussions of the crime, fostering empathy and understanding in those responsible while also holding offenders accountable.

Victim Impact Panels could play a role in bringing to life the human consequences of risky driving behaviour and I support the call for more research to establish and evaluate the best model for utilising panels to both provide an additional outlet for victims and their families, as well as deter criminal road behaviour in NSW.

#### Recommendation 4c: Standard non-parole periods – sentences for serious road crime that results in death must include a standard non-parole period.

Vehicular homicide sentences should include Standard Non-Parole Periods (SNPPs). SNPPs are needed to reflect the serious nature of road crimes, especially those that result in loss of life, and to better align with victim and community expectations.

As we witness more frequent road trauma caused by people that should never have been on our roads, there is an increased expectation that death and serious injury results in time served.

## 5. Jurisdictional issues

#### Recommendation 5: Appropriate jurisdiction of higher courts

– serious road crime offences to be heard in District or Supreme court only

<sup>3</sup> *R v Whyte* [2002] NSWCCA 343; 55 NSWLR 252

All serious road crime should be tried on indictment and categorised as strictly indictable. A new stand-alone Act would bring together all serious road crime offences to be heard only by District Court or Supreme Court. No serious road offences, as currently included in the *Road Transport Act 2013*, should be heard summarily in Local Court due to its sentencing limits and road crimes that result in death should not be heard in the Children's Court.

## 6. The experiences and rights of victims

The ripple effects of criminal behaviour on our roads are felt far and wide throughout the NSW community, and the impacts are extensive and enduring. As well as law reform described above, which should simplify the system and improve transparency and accountability, it is important to minimise the secondary trauma that bereaved families experience and to better support families as they navigate the current complex systems and processes imposed on them.

### Recommendation 6: New approach to designing laws and services

- embed a victim-centred design approach to new laws and services and include road crime in the Charter of Victims' Rights.

Victim rights and support services must be improved and expanded. We need to start anew to engage and consult victims and stakeholders on development of a nation-leading policy to address the road trauma crisis and to completely shift the current paradigm and cultural support of road user privilege and provide a framework for reform that shifts mindsets and deals with road death and injury as seriously as other heinous crimes.

I support the implementation of victim-centred support systems, including access to counselling services, legal and financial assistance, and community resources tailored to meet the unique needs of those affected by road trauma. As more and more NSW families and friends are left to navigate a complex justice system, expanded resources are needed and needed urgently. This includes outreach to regional NSW where support services in remote locations are hard to access.

Road crime needs to be included in the current Charter of Victims' rights or that a stand-alone Charter of Victims' Rights for Road Crime must be established, and the scope of the Victim Support Service needs to be broadened to include victims of serious road crime so that they are able to receive mental health support and financial support immediately after the collision.

Good policy starts with the community in mind, embeds victim experience and applies learning from other policy shift success stories.

This is my experience.

My story begins on Monday 1 November 2021 at 4.23pm as I stood alone in the carpark of my work, I was informed my daughter had been killed. My world imploded.

As I did every day, I pulled my phone out to phone my daughter to chat as I drove home to her. Instead I saw I had 4 or 5 missed calls from the same number, I thought they must need to speak with me and thought maybe it was in regard to my son serving in the Defence Force. I called the number and a voice on the other end stated he was a Senior Constable from Springwood police station and asked where I was, I told him I was at Nepean Hospital and I was just about to drive home. He asked if he could call me back and I asked if everything was alright, I heard him speak to another person and then he responded with "There has been an accident." I asked if my daughter was alright – I thought maybe Mackenzie was on the bus and it had crashed she may have been hurt, he responded with "I am sorry to have to tell you, Mackenzie was hit by a truck and has been killed." I hung up on him!

He called me back and asked me to go back to my office, I told him I couldn't move. He said he was coming to me and didn't want me to be alone, he wanted me to with someone until he and his partner could get to me. As I stumbled through the carpark with the gentle voice of this officer on my phone encouraging me to keep heading towards my office. Before I reached the entrance I saw a friend and she motioned to say goodbye but, looked at me and said, "Tracy are you ok?" I said,



“Help me Beck, I don’t know what to do” and then collapsed. She took my phone and spoke the office and told him she was with me and would take me back to my office and wait with me.

I needed to contact my family, I needed them with me. Beck spoke with my brother and had to break the devastating news to him, she said she would wait for him to come to me at the hospital. I phoned my sister on the Central Coast and told her I needed her to go to our mum, she asked me why and I told her Mackenzie had been killed – I can still hear her scream.

While I sat waiting for what seemed like an eternity for the police to arrive, I kept thinking they had it all wrong, it can’t be Mackenzie. How could it be? When he and his partner finally arrived, he ran to me as I sat in the corridor in a state of shock. He knelt before me and then handed me Mackenzie’s Driver’s Licence, it was true – my beautiful daughter had been killed, she was dead. I asked if I needed to identify her, he said no me confirming that was her licence was enough but, we would later find out it wasn’t. My heart completely shattered, how was I going to tell my sons their little sister was gone? I didn’t want them to hear this over the phone like I did. Unfortunately that’s what had to happen, my brother phoned Rowan and broke the news and my mum called Jordan to break it to him. They were both now making their way to our home and my fear of them driving in such an emotional state was overwhelming, how could it not be? Jordan was posted to Williamtown RAAF Base 2 and half hours away and Rowan lived an hour away near Holdsworth Army Base. Imagine having to make that long drive to your mum because your little sister has been killed because of the selfish actions of another road user.

My brother drove me home that night, I asked him to take the long trip home via Yarramundi because I could not go past the place Mackenzie’s life was stolen, where she died alone surrounded by strangers. To this day 886 days later, I still cannot drive that section of the Great Western Highway through Blaxland.

All we knew that night was the driver had been arrested because he was disqualified from driving, we knew nothing else. It wasn’t until December we learnt what kind of person had mowed Mackenzie down and taken her life. That very first night I said to my sons, we will not give this criminal our energy – he is not worth it, our focus will be fighting for justice and change. This should never have happened and we don’t want another family to experience this devastation, trauma and brokenness.

The police were very caring and compassionate in making sure we did not see Mackenzie and what trauma she had endured. I recently received the Coroner’s Report and I now understand why, I know I would never have been able to go on if I had seen the injuries my baby had suffered. It is traumatising enough reading that report.

On 18 December 2021, I learnt the true history of the 54 year old criminal that decimated our lives. He had been disqualified from driving since 2004 and was disqualified until 2027, he had even been imprisoned previously for continued driving whilst disqualified, he had never held a truck licence and tested positive to GBH and ICE. We were also informed that he had refused to be interviewed by police, the only positive news was he was still locked up for the benefit of everyone’s safety – we didn’t need to worry that he was still out there continuing to ignore the law. At this meeting the officer advised us the likelihood of his sentence (maybe 4 years & only because of the drugs), what insult to Mackenzie and to us. This is not good enough, our loved one’s lives need to be held in the highest regard especially when they are INNOCENT VICTIMS of a Serious Road Crime. Why are these deaths not deemed with the same seriousness of a Homicide? As a society are we so desensitised to Serious Road Deaths that we don’t consider it to be as horrific as one who has been murdered in another way.

In the beginning there was no Manslaughter charge, it was Dangerous Driving Occasioning - Death, Driving Whilst Disqualified, Driving Under the Influence of Drugs – Occasioning Death. Upon attending my first Road Trauma Support Group meeting with my son Rowan, we listened to stories from other families, many told how the person that had killed their loved one was charged with Manslaughter and none of them seemed to have the history like the one who killed Mackenzie. Why did we not have a Manslaughter charge, it was the least she deserved because in our eyes it was MURDER. He knew he wasn't allowed to drive, he took drugs, he got behind the wheel of a vehicle he was not certified to drive so, the intent not care about the safety of the community that day was there the entire time.

After that meeting I went back to the ODPP and asked why we did not have a Manslaughter charge, a meeting was arranged and it was agreed to review the charge. Eventually we were informed they would proceed with a charge of Manslaughter. When a person kills someone in this manner the minimum charge should Vehicular Manslaughter and after investigation it should be a charge of Vehicular Murder. Families should not have to fight for this, we already have so much we have to navigate through at such a traumatic time.

Why does the perpetrator have all the rights? We had to wait 2 years and 1 month to finally have this person sentenced. He sat in remand declining to offer a plea at each court mention, he then decided to terminate the services of his solicitor and apply for Legal Aid and when a solicitor is appointed we have to then wait for the brief to handed over once again – all the while delaying moving ahead with the case.

Eventually another plea offer is made but frustratingly it is exactly the same as the one previously rejected. Once again we were left to wait for the next move by this person and his legal representative and in the process our original Crown Prosecutor was transferred and a new one was appointed. This only added to the trauma and stress we were already under because the next plea offer was totally inappropriate and the new prosecutor was pressuring my son and I to accept it. When I asked the question how the perpetrator can create a charge he is prepared to plead to, when the evidence does not support it – he could not answer me.

After that meeting once again I had to put into writing our disappointment of this person's total disregard to how we felt. We had to question if he had even bothered to read the case history because my son had to remind him, we were the ones that had pushed for the manslaughter charge. We were prepared to wait and go to trial, this person needed to be held to account for killing Mackenzie. We were very grateful for the support and respect of the ODPP solicitor who, was in agreeance with our stance of the manslaughter charge. The next communication was to inform me, it was going to trial and the original prosecutor would be back to see this through.

The trial was due to start Monday 27 November 2023, 2 year and 26 days after Mackenzie was ripped from our lives. On Friday 24 November 2023, he finally admitted his guilt and changed his plea and we all know for that he gets rewarded with a discount on his sentence. Really, after playing the judicial system for over 2 years and dragging out the inevitable and counting down his time served – there should be no reward. This is just another insult to the victim and their family.

Sentencing commenced on Thursday 30 November 2023, and it was very disappointing that the killer is able to choose not to face me or my family in court – proof of how gutless he is. Once again all the rights are in favour. We had to listen to his claim of remorse but we all know that is just for the court, he had 17 years to show remorse and change his ways, he was offered assistance for his drug abuse but did not take it. We had to listen to his “hard” life growing up but let me tell you, the father of my children had a similar upbringing, English was the third language in his household, there was abuse in the home, he was bullied at school. Did he choose a life of crime, drugs or alcohol? NO – when he left school he got a trade, when he was old enough he changed his name so any children he may have would not endure what he went through, he worked hard and has lead an honest life. So to Mackenzie's killer this is no excuse, what he should be told is you rise above it.

We had to sit and hear how he was stopped 12 times in 2 years leading up to that fateful day and still he was not kept off the road. His vehicle should have been impounded. We had to hear how a witness followed him for some distance and thought about calling the police because of his erratic driving but didn't do it. People say to me "Oh the poor thing, look what she has to live with." My response is I DON'T CARE – LOOK WHAT I HAVE TO LIVE WITH BECAUSE SHE DIDN'T MAKE THAT CALL. People need to be encouraged to report bad behaviour and erratic driving on our roads. Friends and family members that sit by and allow unlicensed and disqualified drivers to continue to driver also, need to be held to account.

Two years and one month to the day we lost Mackenzie, he was sentenced to 9 years and 2 months with a Non- Parole period of 6 years and 3 months. He will be eligible for parole on 31 January 2028 – how is that justice? I know compared to some it's a longer sentence but let's just remember he had continued to drive whilst disqualified since 2004. All the while he is in jail his disqualification continues to count down, why is that not suspended until he is released?

I do not understand how a disqualified driver is able to register a vehicle and in particular a heavy vehicle that he has never been certified to drive. Why is there not an alert with a disqualified driver's detail at Service NSW? I worked in health and if precautions are needed for the wellbeing and safety of a patient there is an alert that pops up on their details.

There were so many warnings about this criminal, the loss of Mackenzie's life was preventable. My sons took an Oath to Serve and Protect this country and we feel so betrayed and let down by successive governments and a judicial system that allowed this to happen - because nobody protected Mackenzie that day.

The rights of the victims and their families needs to be a priority, more needs to be done to support them especially in the immediate aftermath of the trauma. We were left foundering, not knowing what to do or who to turn to, the brochure given to me the night Mackenzie was killed amounted to nothing, every number we called they would say "sorry we can't help you, try this number." We were just sent in circles so we gave up.

Repeat offenders need to feel the full force of the law and their sentences should fit the crime. For us, 6 years and 3 months out of his life is nothing when, Mackenzie was just 21 with her whole life ahead of her and was making plans to follow her dreams, so much was taken from her that day, from her brothers and from me. Not only did I lose my youngest child, I lost my best friend and I lost the future we had planned together.

## 7. Road fatality reporting

Recommendation 7: Road fatality reporting of all road deaths in NSW - drawing from safety practices in workplaces and aviation, to enhance investigations, promote transparency, and inform road safety measures while safeguarding individual privacy.

Reporting on all Fatal Road incidents in NSW is needed urgently to inform road safety policy and law reform. Drawing inspiration from proven safety practices in workplaces and aviation, the RTSG proposes NSW introduces fully transparent and nationally shared public reporting of road deaths.